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No. _____

IN THE

Supreme Court of the United States

ARMANDO M. GARZA *ET AL.*,

Petitioners,

—v.—

GRAY & BECKER, P.C.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE TEXAS COURT OF APPEALS FOR THE THIRD DISTRICT, AUSTIN, TEXAS

PETITION FOR WRIT OF CERTIORARI

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107 AP

QUESTIONS PRESENTED

1. Do state courts have jurisdiction to adjudicate a lawsuit by union lawyers against individual members of a federal labor union to enforce a contingent fee contract between union lawyers and local unions hiring the lawyers to represent the union in its capacity as exclusive representative under the Civil Service Reform Act in a grievance for back pay against an Agency before the Federal Labor Relations Authority, or are such suits are barred by *Atkinson v. Sinclair Refining Co.*, 370 U.S. 238 (1962) and the CSRA?

2. Should the holding in *Atkinson v. Sinclair Refining Co.*, 370 U.S. 238 (1962), that state and federal courts lack jurisdiction over suits against individual union members for a union contract be expressly applied to a contract signed by a unions recognized as exclusive representatives by the CSRA?

LIST OF PARTIES TO THE PROCEEDINGS

Petitioners are:

GARY LEE ADAMS, FELIX C. ALMAGUER, LUIS ALVA, JUAN M. ALVAREZ, VERONICA R. ALVARADO, MIGUEL V. AMADOR, REYNALDO M. ANAYA, BRUCE ANDREWS, PHIL A. ANDERSON, BRUCE ANDREWS, GUILLERMO ARMENDARIZ, RUBEN ARREOLA, JR., ALEJANDRO AYALA, RONALD J. AYCOCK, STEVEN A. BALLI, MARGARITO BARRAZA, JR., RAUL C. BENAVIDES, HIPOLITO L. BENAVIDEZ, ARTURO BERLANGA, III, LLOYD L. BIRMINGHAM, LONNIE P. BLOMER, EDWARD A. BOHNENBERGER, FRANCIS C. BURDETT, RONALD E. CABALLERO, RAMIRO F. CAMPOS, IGNACIO CANTU, JOHNNY CANTU, ROBERT M. CANTU, ARNOLD M. CANALES, EUSEBIO CANO, CHARLES G. CARTER, PERFECTO N. CASAS, LUIS C. CASTILLO, SABAS CAVAZOS, JR., ALFRED H. CERVERA, JAMES E. CHADDEN, SR., CHRIS COBAL, A. J. COLLIER, JR., CRUZ G. CORDOVA, MARGARET CORDOVA, KAY CORRAL, FLORENCE CRAIG, EUSEBIO CANO, TOM M. DAILEY, DONALD DAVILA, GILBERT DAVILA, ABRAM M. DEASES, MICHAEL J. DOUGHERTY, FELIBERTO DE LA GARZA, RICARDO V. DE LA GARZA, JESUS DELEON, ARNOLD DE LOS SANTOS, OSCAR DE LOS SANTOS, VALENTIN DE LOS SANTOS, ALFRED T. DIMAS, JUAN R. DUENEZ, OSCAR P. DUNNE, BILL EDGAR, JR., ALBERT ELIZONDO, B.K. ELLINGER, ABEL ELIZARDO, JOHN EPPERSON, DAVID ESPINOZA, ELADO ESTRADA, PEDRO MOLINA FIGIROVA, JOSE A. FIGUROA, CHARLES T. FLEMING, ALBERT FLORES, JOSE R. FONSECA, CLAY F. FORD, RUBEN FUENTES, BARBARA J. GALLAGHER, TOMAS E. GALLAGHER, HECTOR

GALLARDO, MANUEL GAMEZ, ABEL GARCIA, ABRAHAM GARCIA, ANDRES GARCIA, JR., DANIEL R. GARCIA, DAVID B. GARCIA, FEDERICO V. GARCIA, JR., GUADALUPE R. GARCIA, LAURINO B. GARCIA, MANUEL G. GARCIA, RUBEN GARCIA, ABELARDO GARZA, ALFREDO B. GARZA, ARMANDO M. GARZA, CARLOS G. GARZA, OFELIA GARZA NOE GARZA, RAUL B. GARZA, RAYMOND M. GARZA, RUDY GARZA, ARTHUR GODDING, JR, GUSTAVO GOMEZ, ROBERT F. GOMEZ, JOE A GONZALES, RAMIGIO GONZALES, DAVID GONZALEZ, HOMER G. GONZALEZ, JAVIER GONZALEZ, MANUEL GONZALEZ, III, RUBEN D. GONZALEZ, FRANK R. GORSUCH, JR., RUFUS GRAVES, SR., HARRY L. GRIGSBY, MORRIS GRIMES, BALDEMAR GUERRA, EDUARDO G. GUERRA, JR., PEDRO GUERRERO, JR., RUBEN GUERRERO, SR, PATRICIA GUTIERREZ, RODOLFO GUTIERREZ, ERNEST GUZMAN, FRANCISCO GUZMAN, JR., PHILLIP HADDOCK, GLORIA H. HALL, JAMES R. HARRIS, EDWARD HERNANDEZ, JUAN R. HERNANDEZ, MARCUS HERNANDEZ, JR., ISMAEL D. HINOJOSA, DENNIS J. JANAK, MANUEL D. JOHNSON, FREDERICK B. KLEIN, PAUL C. KRAUSE, ROGER KRAUSE, JOE L. LANDA, GERALD R. LARRIVEE, JOE LEE, ROBERT LEMOS, RAOUL ARNOLD LERMA, PATRICIA A. LONG, MATIAS LONGORIA, JR., JOHN LONGORIA, FRANCISCO LOPEZ, JR., RICHARD LOPEZ, ROEL LOPEZ, JUSTO LOZANO, SANTIAGO MAR, MARISSA D. MARTIN, ABELINO S. MARTINEZ, ELISEO G. MARTINEZ, ENRIQUE B. MARTINEZ, GERONIMO MARTINEZ, JOSE M. MARTINEZ, JR., NICOLAS MARTINEZ, OVIDEO MARTINEZ, RENE MARTINEZ, RICARDO G. MARTINEZ, SR., ROLANDO H. MARTINEZ, SANTOS F. MARTINEZ,

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Respondent is:

GRAY & BECKER P.C.

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PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully petition for a writ of certiorari to review a final judgment of the Third Court of Appeals, Austin, Texas.

OPINIONS BELOW

The Court of Appeals' opinion is reprinted in the appendix hereto at pages 1a to 19a. The Travis County District Court's judgment is reprinted in the appendix at pages 20a to 52a. A related class action judgment issued in the same case and is reprinted at 53a to 68a. Another related opinion issued in *Salgado et al., v. Gray & Becker, P.C.*, Cause No. 01-CV-307, the United States District Court for the Southern District of Texas. This decision is reprinted at 69a through 77a.

STATEMENT OF JURISDICTION

The trial court rendered judgment on March 18, 2002. The Third Court of Appeals rendered its judgment on December 12, 2002. A timely petition for review was filed in the Supreme Court of Texas on April 2, 2002, and a motion for rehearing was timely filed and denied on September 4, 2003. This petition is filed on December 3, 2003. This Court has jurisdiction to review this final judgment of a state court. 28 U.S.C. § 1257(a).

STATUTORY PROVISIONS

(b) Responsibility for acts of agent; entity for purposes of suit; enforcement of money judgments

> Any labor organization which represents employees in an industry affecting commerce as defined in this

> chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

29 U.S.C. § 185(b).

Statement of the Case

Petitioners are individuals who were represented by American Federation of Government Employees Local 2142, National Federation of Federal Employees Local 797, or International Association of Machinists and Aerospace Workers Lodge 2049 (Hereafter the "Unions"). All are current or past civilian employees of the United States Army working at the Corpus Christi Army Depot (CCAD).

Respondent is the lawfirm of Gray & Becker P.C. It was hired by local union presidents to pursue a grievance over pay rates for certain union members on a 1/3 contingency fee basis. 3a.

Petitioners seek relief from a final state court judgment holding them individually liable to Respondent for the contingent fee contract entered into by their unions. 2a.

In 1997 the three federal labor unions learned certain of their members had been exposed to asbestos at CCAD and should have been paid Environmental Differential

Pay. 5 U.S.C.A. § 5343(c)(4); 2a. The presidents of the local unions hired Respondent on a 1/3 contingent fee contract to pursue a grievance on behalf of the unions for these back wages. 3a.

By law and the Labor Management Agreements the only parties to an EDP grievance and arbitration are federal labor unions and the Agency, and the Unions are exclusive representatives of union members. 5 U.S.C. § 7114(a)(1); 2a. Individuals represented by a federal labor union in an EDP dispute with an Agency are not parties and cannot hire lawyers to represent their individual interests. Congress specified:

> (5) The rights of an exclusive representative under the provisions of this subsection shall not be construed to preclude an employee from—
>
> > (A) being represented by an attorney or other representative, other than the exclusive representative, of the employee's own choosing in any grievance or appeal action; or
> >
> > (B) exercising grievance or appellate rights established by law, rule, or regulation; except in the case of grievance or appeal procedures negotiated under this chapter.

5 U.S.C. § 7114(a)(5). The underlying EDP grievance was a "grievance or appeal procedures negotiated under this chapter." *See* 5 U.S.C. § 7121(a)(1).

The Unions prevailed. 3a. In his award the arbitrator found persons represented by these three federal labor unions, who numbered approximately 3500, were exposed to asbestos at work and entitled to EDP. *United States Department of the Army, Corpus Christi Army Depot, Corpus Christi, Texas, v. American Federation of Government Employees, Local 2142, et al.*, 56 F.L.R.A.

1057 (2001). The award totaled about $82,000,000 in back pay. 3a. At the request of the Unions and Respondent, the arbitrator also ordered the head of CCAD to segregate 1/3 of the award, about $27,000,000, and pay it directly to Respondent. In addition, the arbitrator subsequently ordered the Agency to pay Respondent and another lawfirm $662,587 in reasonable attorneys fees pursuant to the Back Pay Act. *United States Department of the Army, Corpus Christi Army Depot, Corpus Christi, Texas, v. American Federation of Government Employees, Local 2142, et al.*, 58 F.L.R.A. 87 (2001).

The Agency filed an exception before the FLRA. On January 31, 2001, the Authority affirmed the award. On the fee issue, it held the head of CCAD could not be ordered to impose deductions on a federal labor union members' back pay, and although the Secretary of the Department of Defense could be asked to make such an allotment, he was not obliged to do so. 71a. The Unions (*i.e.* Respondent) sought reconsideration of the fee rulings. *United States Department of the Army, Corpus Christi Army Depot, Corpus Christi, Texas, v. American Federation of Government Employees, Local 2142, et al.*, 57 F.L.R.A. 290 (2001). The motion was denied.

The Secretary declined to make any deduction for Respondent's contingency fees and indicated he would calculate and electronically deposit 100% of the award directly into each union members' bank account. 71a.

Having failed to secure a deduction from the Agency, Respondent began demanding that individual union members pay a contingent fee pursuant to the contracts signed by the three local union presidents. A lawyer from Corpus Christi named Greenwell began advising union members not to pay Respondent. 72a. Citing *Atkinson v. Sinclair Refining Co.*, 370 U.S. 238 (1962), he informed union members they are not individually

liable for contract liabilities of their labor union. Greenwell offered to represent them for 20% of each individual's award. 72a. Less that twenty of the 3500 union members eventually hired him. On June 1, 2001, Respondent filed suit in state district court in Travis County, Texas against the Unions and local union presidents for injunctive and declaratory relief holding individual union members liable on the fee contract. Greenwell was joined as a defendant on June 13, 2001.

On June 4, 2001, Greenwell filed *Salgado et al., v. Gray & Becker P.C., et al.,* in state district court in Nueces County, Texas, where CCAD is located, seeking a declaration that individual union members did not have a legal duty to pay Respondent out of their own pocket. The case was filed as a class action. Respondent joined the Unions and the Department of Defense and removed the case to the United States District Court for the Southern District of Texas, Judge Jack presiding. 69a-77a. Respondent and the Unions were represented by the same attorney.

Respondent sought an injunction requiring the Agency Head to segregate and pay them 1/3 of the award. 72a. Respondent also claimed Salgado and similarly situated federal employees were liable individually for 1/3 of their award under the state law doctrine of *quasi-estoppel.* Respondent sought to certify a class of individual union members and sought declaratory and injunctive relief on the contract. Salgado, represented by Greenwell, asserted claims against the federal labor unions and Respondent, and sought a declaration that individuals represented by the three federal labor unions were not individually liable to Respondent. 73a.

On November 30, 2001, the U.S. District Court dismissed the case for lack of jurisdiction. 69a. It held this was a federal labor dispute between union lawyers and

union members covered by the CSRA, and *Atkinson* and its progeny barred court jurisdiction over claims asserting personal liability against union members for union contracts. 73a-77a. Distribution of 100% of the $82,000,000 EDP award was imminent.

On November 9, while this federal action was still pending, Greenwell intervened his union member clients in the Travis County lawsuit Respondent filed in June against Greenwell and the Unions. That day Greenwell "settled" with Respondent. 60a-68a. His intervention papers sought certification of a defendants' class consisting of all 3500 federal employees and to impose the settlement upon them. 4a-5a. The terms of the settlement confessed a money judgment against individual class members totaling 25% of their EDP recovery. 60a-68a. The class was immediately certified by the state district judge and Greenwell was appointed class counsel.

On November 20, 2001, eleven days after certification, the Travis County district court rendered judgment against this class of absent defendants pursuant to the settlement. 53a-68a. In addition to holding each union member individually liable for 25% of his or her EDP recovery, the judgment provided for immediate garnishment of individual union members' bank accounts if the judgment was not paid within ten days of receipt of the EDP award, it waived statutory and constitutional rights barring illegal garnishment of current wages, it waived the right to appeal or file post judgment motions, it provided persons who did not pay 25% within ten days of its receipt shall pay 33% plus additional attorneys' fees, and bound all class members to releases for Respondent and the Unions. 56a-59a.

In December 2001, the Agency directly deposited the arbitration award into union members' personal bank accounts.

Petitioners, who then numbered about 380 and included four persons Greenwell listed as class representatives, then intervened in Respondent's Travis County action. 2a. They argued the state court had no jurisdiction to approve a settlement or to adjudicate this fee dispute. Without an evidentiary hearing Petitioners were severed into a separate case. 6a. Their attempted appeal of the class action judgment was denied for lack of standing. 1a n.1. Respondent then moved for writs of garnishment, injunctive relief, and summary judgment on its fee claim against Petitioners.

The trial court issued writs of garnishment against Petitioners based on the class action judgment. It granted injunctive relief against Petitioners. It also rendered summary judgment against them holding all were individually liable to Respondent for the full 1/3 contingency fee. The trial court also awarded Respondent attorneys fees for the Travis County action equal to $2000 per person for trial and $5000 per person for appellate attorneys' fees in the event of an appeal. 6a. It is this judgment Petitioners seek to have reviewed by *certiorari*.

The judgment against Petitioners was affirmed by the Third Court of Appeals in Austin Texas. It ruled the "fee agreements between the unions and [Respondent] were enforceable against [Petitioners] and that [Respondent] was entitled to collect from [Petitioners] the contractual attorney's fees . . .". 6a. It overruled all challenges to jurisdiction by deciding this case did not involve a dispute by a union member against its union. 7a; 9a-10a. It also concluded the "claims at issue . . . are solely [Respondent's] claims for contractual attorney's fees." 7a.

The Court also addressed the United States District Court's decision in *Salgado*. *Compare* 9a *with* 69a-77a. The Court could not discern any ruling by the District

Court that "the FLRA had exclusive jurisdiction over the merits of [Respondent's] recovery of contractual attorney's fees." 9a. The Court instead concluded the *Salgado* decision did not address Respondent' claim against union members. *But see* 72a; 73a; 75a-77a. The Court distinguished the instant case on the basis that the "FLRA has exclusive jurisdiction of employee claims against their *unions*." 9a. On the merits, the Court decided that, as a matter of law, Petitioners are individually liable to Respondents for 1/3 of their arbitration award based on the state-law doctrine of "acceptance of the benefits" and *quasi-estoppel*. 13a-16a.

Respondent sought mandamus and discretionary review in the Supreme Court of Texas. That was denied. This petition follows.

Reasons for Granting the *Writ*

The Court of Appeals' opinion fashions a significant state-law exception to federal labor law barring lawsuits against individual union members for a union contract or tort liability. *Atkinson v. Sinclair Refining Co.*, 370 U.S. 238 (1962); 29 U.S.C. § 185(b). The requirement of exclusive jurisdiction before the FLRA is even stronger when the dispute is governed by the CSRA and involves members of a federal labor union versus a union, union agents, or an Agency. *Karahalios v. Federal Employees*, 489 U.S. 527 (1989); *United States v. Fausto*, 484 U.S. 439 (1988); *Montplaisir v. Leighton*, 875 F.2d 1 (1st Cir. 1989). This decision circumvents important provisions of the CSRA prohibiting fiscal irresponsibility and conflicts of interest by union agents, 5 U.S.C. § 7120(a)(3), (4), and unfair labor practices by labor organizations against individual union members. 5 U.S.C. § 7116(b)(1), (3), (5), and (8). It also negates procedu-

ral protections set forth in the CSRA which require fair hearings, 5 U.S.C. § 7121(b)(1), and grant union members the right to counsel of choice in disputes between the union and union members. 5 U.S.C. § 7114(a)(5). As this case shows, this law remains sound and should not be whittled away by exceptions crafted by state judges.

In the Danbury Hatter's Case, *Lowe v. Lawlor*, 208 U.S. 274 (1908), national union members were inducing a manufacturer to unionize under threat of boycott. The manufacturer sued union members individually for a conspiracy to violate anti-trust law. This Court allowed the case to go to trial. That trial produced a substantial judgment against many union members, forcing some to lose houses.

In response, Congress passed § 301 of the Taft-Hartley Act. 29 U.S.C. § 185. This law allowed unions to sue and be sued, but provides union members are not liable in tort, contract, or otherwise for union liabilities. In *Atkinson*, this Court concluded that Congress expressed its intent in Section 301 that "the union as an entity . . . should in the absence of agreement be the sole source of recovery for injury inflicted by it." *Id.* at 249. The Court stated, "[t]his policy cannot be evaded or truncated by the simple device of suing union agents or members, whether in contract or tort, or both, in a separate count or in a separate action for damages." *Id.* Accordingly, with monotonous regularity, court after court has cited *Atkinson* to foreclose state-law claims against individual union members for actions of the union in its capacity as exclusive bargaining agent for its membership. *See, e.g. Arnold v. Air Midwest, Inc.*, 100 F.3d 857, 861-862 (10th Cir. 1996); *Montpalisir v. Leighton*, 875 F.2d 1, 4 (1st Cir. 1989); *Peterson v. Kennedy*, 771 F.2d 1244, 1257 (9th Cir. 1985) *cert. denied*, 475 U.S. 1244 (1986).

While it is true that the Civil Service Reform Act of 1978, 5 U.S.C. § 7101 *et seq.*, does not contain a statutory equivalent of § 301 of the Labor Management Relations Act, it provides even greater administrative control over federal labor disputes by requiring claims against CSRA unions to be pursued exclusively through the administrative process set forth in the CSRA . *See Karahalios*, 489 U.S. 533; *Fausto*, 484 U.S. at 447. Congress reasonably decided this was necessary to eliminate the earlier difficulty, raised here, of inconsistent results on similar facts caused by various courts applying different law to the same problem. *Karahalios*, 484 U.S. at 444, 451. Despite this difference, the policy reasons against making individual union members liable for union actions remains the same and the basic holding of *Atkinson* to that effect applies with at least equal force to disputes governed by the CSRA.

The contingent fee contract in the instant case could not relate closer to the core function of a federal collective bargaining unit. The contract was entered into by the Unions in their capacity as representatives of their bargaining units and its sole purpose was to enlist the Respondent's aid in helping the Unions to pursue the Unions' grievance against CCAD. To allow Respondents to sue the individual union members in state court for this union activity is precisely the sort of evasion of federal labor policy prohibited by *Atkinson.* As the district court in *Salgado* concluded,

> this suit is a labor dispute among union members, their union, and lawyers contracted by the union. The dispute is covered by the CSRA . . . In other words, it is at heart a labor dispute. Disputes among fedearl employees and their unions are within the exclusive province of the FLRA.

76a.

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Moreover, as the *Salgado* court recognized, failure to protect the individual union members from suit would lead to an "absurd result." 76a. It is well established that individual union members may not sue union lawyers for malpractice. For example in *Montplaisir*, 875 F.2d 1, the Court dismissed for lack of jurisdiction a legal malpractice claim by unionized federal air traffic controllers against the union lawyers who erroneously advised they would not be fired by President Reagan. *Id.* at 4. The Court based its decision on a "powerful line of authority" starting with *Atkinson* barring state law claims "however inventively cloaked" arising from the collective bargaining process. *Id.* at 4. *See also Peterson*, 771 F.2d at 1259. But if the courts lack jurisdiction to consider a member's suit against a Union attorney for union representation, then they must also lack jurisdiction to consider a Union attorney's suit against individual union members.

The U.S. District Court in *Salgado* accordingly held this dispute between agents and members of a federal labor union over these contract rights and duties is governed by the CSRA. If Respondents have a claim against Petitioners individually, it lies exclusively before the FLRA. 76a.

The lower state courts disagree. 7a; 9a-10a. The state courts erred. Jurisdiction was repeatedly challenged in these courts by motion, mandamus, appeal, and petition. 7a; 9a-10a. The state Court of Appeals addressed jurisdiction and held state court jurisdiction existed to adjudicate state-law claims by union lawyers against union members based on a union contract. *Id.* The Court apparently failed to understand that the reasons why the federal court in *Salgado* had to dismiss apply with equal force to a state court. Its holding must be reversed and this action dismissed.

The reason why this case is important is because legal relations between a union, its agents, the employing Agency, and union members, are expressly governed by the CSRA, which is an integrated and comprehensive federal scheme completely displacing other law. *Fausto*, 484 U.S. at 444. This was needed to achieve uniform compliance with Congressional policies governing federal labor relations, which is a compelling federal interest.

In the CSRA Congress fashioned a delicate balance of federal law governing the very issues erroneously decided by the lower courts. In its findings and purpose of the CSRA Congress relied on "experience in both public and private employment" to decree various rights and procedures to "meet the special requirements and needs of the Government." 5 U.S.C. § 7101. This experience includes the Danbury Hatters' case, 29 U.S.C. § 185, corrupt and undemocratic unions, 5 U.S.C. § 7120(a), fiscal irresponsibility, illegal transactions, and conflicts of interest by union agents, 5 U.S.C. § 7120(a)(3) and (4), failures by unions to negotiate in good faith, 5 U.S.C. § 7114, and a laundry list of unfair labor practices by labor organizations against individual union members, 5 U.S.C. § 7116(b)(1), (3), (5), and (8). Congress had good reason to comprehensively address these substantive issues by the CSRA.

Congress created procedural protections which require fair hearings, 5 U.S.C. § 7121(b)(1), are adjudicated by the FLRA, 5 U.S.C. § 7118, grant union members the right to counsel of choice in disputes between the union and union members, 5 U.S.C. § 7114(a)(5), and strictly limit participation of courts. 5 U.S.C. § 7123.

CSRA is cumulative of substantive rights reflected in 29 U.S.C. § 185. Nothing shows Congress picked members of federal labor unions to conduct a social experi-

ment to see if the bitter experience of the Danbury Hatters' Case is now a good idea.

The CSRA and this Court's decisions, including *Atkinson*, *Karahalios*, and *Fausto*, create legitimate expectations among unions, union members, union agents, persons represented by a union, Agencies, and third parties. These expectations include that federal labor disputes, to the extent they are deemed justiciable, will be decided by federal law fairly before the FLRA. The expectation is such disputes will not be decided by state law in state courts by state judges. Under the Court of Appeals' decision, potential state-law liability determined by state court judges and juries and enforced by injunctions and garnishments will deter these players from engaging in collective bargaining activity just when it is needed most to grow the economy.

Under the Court of Appeals' decision any union member may now be sued under state law in state courts by a union lawyer for a union contract. It allows the same result as in the Danbury Hatters' Case without due consideration of reasons why Congress reversed that decision. At least in the Danbury Hatters' Case union members violated a statutory duty. In the instant case Union members' liability is strict because the Agency Head deposited money in their bank account. This exception can only become far worse than what existed before the CSRA because it is decided in state courts applying innumerable state laws that are not even intended to address the special requirements and needs of the Government.

This is not trivial. In the lower courts Respondent secured settlement of a defendant-only class action judgment against about 3500 union members for a union contractual liability. 53a-68a. Properly applying *Atkinson*, this settlement misallocated over $20,000,000. All

who intervened and objected were placed in a mass action where they were promptly enjoined, garnished, and subjected to the instant summary judgment. 20a-52a. All this was approved by the Texas courts at the urging of Texas lawyers.

This decision is exposing all members of federal labor unions to innumerable state law claims for acts of their unions. But it also creates important substantive exceptions to federal labor law. A review of the lower court's reasoning demonstrates how inappropriate it is for state courts to make law in this exclusively federal arena.

The Court of Appeals' exception to *Atkinson* and the CSRA, as currently articulated, is based purely on Texas state law. To uphold the trial court's summary judgment the Court first relied on *Newman v. Link*, 889 S.W.2d 288 (Tex. 1994), for the proposition that Petitioners could not accept the arbitrator's award and decline to pay 1/3 to Respondent. 15a. The Court also upheld summary judgment for Respondent on the theory of quasi-estoppel: "[t]he principles of quasi-estoppel preclude a party from asserting, to another's disadvantage, a right inconsistent with a position previously taken." *Enochs v. Brown*, 872 S.W.2d 312 (Tex. App.–Austin, 1994, no writ). 15a. The Court's ruling highlights the key problem in this case, but first, the substantive reason why the ruling is incorrect must be identified.

Atkinson did not recognize an exception based on state equitable principles simply because the union member benefits from union activity. The purpose of organized labor is to secure various benefits in an orderly fashion, and that means by law. If acceptance of benefits created an exception to the CSRA and *Atkinson*, it would swallow the rule.

Petitioners are not saying unions are prohibited from competing for valuable services in the free market through the use of contingency fee contracts. Under special circumstances federal law allows a union to impose a special assessment to pay for services themselves. *Ellis et al., v. Brotherhood of Railway, Airline, and Steamship Clerks, et al.*, 466 U.S. 435 (1984). The Unions did not follow any procedures to impose a special assessment under federal law on its members. Rather than go through the process of making fair assessments against membership, the lower court invites unions to delegate to union lawyers a discriminatory special assessment power through state court *quasi estoppel* actions against individual union members. As in this case, this power can be applied arbitrarily and punitively to suppress dissent and advance union lawyers' conflicting financial interests.

In sum, allowing unions to delegate the right to make assessments to union lawyers through state court suits threatens to render the CSRA a nullity.

Respondent argued below that state court jurisdiction was appropriate because the federal arbitrator ordered that Respondent should be paid 1/3 of the award. This reliance on the arbitrator's ruling overlooks two critical points: First, when the arbitrator approved the 1/3 fee the only parties before the arbitrator were the Army and the Union. The Army had no reason to challenge the validity of the contingency fee contract as long as it did not have to make the assessments itself. After all, it was not the Army's money that was going to pay the fee. And the Unions (through their attorneys, the Respondents) were more than happy to have the fee assessed directly against the individual members so the Unions would not have to pay it themselves (or fund it through a special assessment). In short, there was no one before the arbi-

trator to file an exception before the FLRA with an interest in opposing individual liability for the fee; rather, the opposite was true. More importantly, even if the arbitrator could lawfully have ruled on the propriety of assessing the fee against the individual union members, the arbitrator could not create state court jurisdiction to enforce his ruling where none exists. The CSRA places exclusive jurisdiction in the FLRA to enforce the arbitrators award; it does not create state court jurisdiction to enforce such awards. 29 U.S.C. § 7123 (a), (b), and (d); *see Karahalios,* 489 U.S. at 532.

The first point bears further examination because it explains how this happened. The parties to the grievance were the three local unions and the Agency. The arbitrator determined persons represented by the unions were entitled to EDP. That part of his order was fully and fairly litigated and is the product of an adversary hearing. This ruling was affirmed by the FLRA.

The arbitrator also ordered the Agency to segregate and pay Respondent 1/3 of the award, and decided individual union employees owed this fee to Respondent. 15a. That order was not the product of an adversary hearing, and under settled principles is not even entitled to preclusive effect. *Blonder-Tounge v. University of Illinois Foundation*, 402 U.S. 313, 329 (1971) (Some litigants—those who never appeared in a prior action—may not be collaterally estopped without litigating the issue. They have never had a chance to present their evidence and arguments on the claim. Due process prohibits estopping them . . .").

Only the unions' collective right to EDP for its members was before the arbitrator. The Agency and Unions were the only parties, and the Unions were Petitioners' exclusive representatives. 5 U.S.C. § 7114(a)(1). The arbitrator could not resolve the fee dispute between indi-

vidual union members and the union lawyers without applying a different set of rights and procedures under the CSRA. In a labor dispute between an individual and the union, the individual is guaranteed the right to counsel of choice. 5 U.S.C. § 7114(a)(5)(A). This right did not apply to the dispute between the unions and the Agency. *Id.*

Interests of the Unions and Respondent were identical: to find a means to coerce dissenting individual union members to pay Respondent notwithstanding *Atkinson* because the local union had limited assets. This created conflict of interest between them and individual union members. This conflict was so serious Respondent specifically pointed it out in their motion for reconsideration to the FLRA. 57 F.L.R.A. 290.

In pursuing the fee dispute simultaneously with the EDP grievance, and later pursuing union members individually in state courts, Respondents and the Unions agreed to and are violating duties owed individual union members under the CSRA. These duties include the right of individual union members to be free from unfair labor practices by a labor organization under 5 U.S.C. § 7116(b)(1), (3), (5), and (8). They also breached duties relating to conflicts of interest in financial transactions involving agents, and fiscal integrity of the organization. 5 U.S.C. § 7120(a)(3) and (4). It is therefore inescapable that the exclusive forum for this dispute is the FLRA.

This case presents a different fact pattern than prior decisions from this Court because the judgment is from a state court, on state law theories, for union lawyers, against individual members of a federal labor union adjudicating a dispute arising from a union contract. Federal courts to consider this jurisdiction issue, including the U.S. District Court in this case, dismiss. *Karahalios*, 489 U.S. at 537; *Fausto*, 484 U.S. at 455

(affirming the court of claims' dismissal); *Atkinson*, 370 U.S. at 239; *Montplaisir*, 875 F.2d at 4. The Court of Appeals' opinion in this case creates an unacceptable and dangerous exception to federal labor law. It renders meaningless all the progress achieved by Congress in enacting the CSRA, this Court in *Karahalios Fausto,* and *Atkinson*, and the federal district court in this case. A primary function of this Court in our federal system is to intervene when state courts render judgments sufficiently harmful to federal law. This Court should do so here.

Conclusion

The petition for writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

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TEXAS COURT OF APPEALS,
THIRD DISTRICT, AT AUSTIN

No. 03-02-00136-CV

ARMANDO M. GARZA, *et al.*,
Appellants,

—v.—

GRAY & BECKER, P.C.,
Appellee.

FROM THE DISTRICT COURT OF TRAVIS COUNTY,
200TH JUDICIAL DISTRICT NO. GN104188,
HONORABLE PAUL DAVIS, JUDGE PRESIDING

Originally, appellants filed a petition in intervention as defendants in district court proceedings involving a court approved settlement agreement regarding contractual attorney's fees owed to appellee, Gray & Becker.[1]

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[1] Appellants originally intervened in the Travis County district court proceedings cause number GN101682. Appellants perfected an appeal from the final judgment in that cause, but this Court dismissed their appeal for want of jurisdiction. *See De la Garza v. Gray & Becker*, 03-02-00135-CV, 2002 Tex. App. LEXIS 5460 (Tex. App.—Austin July 26, 2002, pet. filed) (not designated for publication). Additionally, this Court has addressed two other appeals related to the

In those proceedings, without reaching the merits of any claims related to appellants, the district court severed appellants and all claims between them and Gray & Becker into a separate cause from which this appeal arises. Following the district court's rendition below of a final order, appellants contend that the district court (1) did not have jurisdiction over this attorney's fees dispute; (2) erred in refusing to stay proceedings while appellants pursued an interlocutory appeal; (3) erred in severing appellants and all claims between them and Gray & Becker from the original Travis County district court proceeding; (4) erred in failing to transfer venue; (5) erred in rendering a partial summary judgment; and (6) erred in awarding Gray & Becker additional attorney's fees. We will affirm the district court's judgment.

Background

Related proceedings

In 1997, members of three unions at the Corpus Christi Army Depot wished to pursue grievances against the United States Army regarding their asbestos exposure claims. The three unions were the exclusive representatives of their members and were authorized under collective bargaining agreements with the Army to pursue grievances on behalf of their members. The unions contracted with Gray & Becker to represent their members' interests in collective bargaining grievance proceedings against the Army. The unions' representatives

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same attorney's fees settlement agreement. *See Garcia v. Gray & Becker*, 03-02-00372-CV, 2002 Tex. App. LEXIS 6883 (Tex. App.—Austin September 26, 2002, no pet.) (not designated for publication); *Cantu v. Gray & Becker*, 03-02-00099-CV, 2002 Tex. App. LEXIS 8212 (Tex. App.—Austin Nov. 21, 2002, no pet. h.) (not designated for publication).

entered into attorney's fee agreements with Gray & Becker and agreed to pay Gray & Becker a contingent fee in the amount of 33-1/3% of any recovery. Gray & Becker represented the unions and their members throughout the grievance process and a labor arbitration proceeding. In 2000, the arbitration resulted in the Army paying $82 million to the unions' members. The arbitrator also ordered the Army to pay Gray & Becker attorney's fees in accordance with the unions' contingent attorney's fee contracts. The Army appealed the arbitration order to the Federal Labor Relations Authority ("FLRA"). Gray & Becker represented the unions' members during the appeal. The FLRA modified the arbitration order only in regard to the attorney's fees and directed the Army to request its agency head to permit deductions from each of the employees' awards to pay attorney's fees in accordance with the contingent fee contracts. The Army's agency head at the Department of Defense denied the Army's request, and Gray & Becker was left to its own devices to collect its attorney's fees.

Gray & Becker then commenced a lawsuit and alleged that the employees who received portions of the arbitration award were obligated to pay contractual attorney's fees to Gray & Becker in the amount of 33-1/3% of each employee's gross recovery under the award; alternatively, employees who executed the Agreement for Compromise & Payment of Contractual Attorney's Fees (the "27-1/2%" Agreement) were obligated to pay contractual attorney's fees of 27-1/2% of the employee's gross recovery under the award. The law firm of Harris & Greenwell represented a number of employees who filed counterclaims against Gray & Becker asserting that as eligible employees under the arbitration award they were *not* obligated to pay attorney's fees to Gray & Becker due to Gray & Becker's improper, unlawful, or

tortious acts in negotiating the attorney's fee contracts. In November 2001, Harris & Greenwell, on behalf of the employee defendants, and Gray & Becker filed with the district court an "Agreement for Class Action Resolution and Settlement (subject to Court approval)."

The agreement stated that the employees' prospects of prevailing on their claims were uncertain, as the court had ruled adversely on similar employees' claims and defenses in another case, and that the employees would be subject to liability and judgment for additional attorney's fees incurred by Gray & Becker in the prosecution of the enforcement and collection of their claims. The parties agreed that it was in all of their best interests to have one court address and resolve the pending claims instead of having multiple lawsuits in various forums and venues. Gray & Becker, in compromise and settlement of its claims and the employees' claims, agreed to accept 25% of each employee's gross recovery under the award as full and final settlement of the employees' contractual attorney's fees obligation to Gray & Becker. Gray & Becker agreed to provide, at its expense, notice (prepared by Harris & Greenwell) to all class members of the class certification, the settlement, and the fairness hearing. Further, Gray & Becker agreed to provide the class members with final notice of the court's approval of the class settlement. The district court defined and certified two classes of individuals, named class representatives, appointed class counsel for both classes, approved the notice to be sent to the class members, and ordered that the notice be mailed to each member of the two classes. Additionally, the district court tentatively approved the terms of the proposed settlement agreement and set the date for a fairness hearing.

All class members were sent a detailed notice by direct mail based on the Army's address list for current

and former employees. Further, a detailed notice was published in a Corpus Christi daily newspaper, and Gray & Becker held two open meetings at the Corpus Christi Army Depot. The district court held the fairness hearing and rendered a final judgment. The judgment contained three lists of individuals: those individuals covered by the judgment; those individuals excluded from Class I as a result of their request to opt out in accordance with the notice of class action; and those individuals who were excluded from Class II as a result of their request to opt out, after receiving the notice of class action. Further, the judgment ordered each class member to pay Gray & Becker 25% of the gross amount of recovery under the arbitration award, and declared that upon such payment, either through direct pay or garnishment, the individual would fully satisfy any claim Gray & Becker might have against the individual. The judgment further ordered each individual to pay 25% of the gross recovery within ten days of receiving the class members' portion of the arbitration award. If not paid within ten days, those non-paying individuals were ordered to pay Gray & Becker 33-1/3% of the employee's gross portion of the award plus reasonable and necessary attorney's fees incurred by Gray & Becker in the prosecution and collection of its fees.

Appellants, approximately 380 employees who did not timely opt out of the attorney's fees settlement agreement, were dissatisfied with their options under the agreement. Despite their failure to opt out, appellants wanted to be disassociated from the settlement agreement and preferred to assert their own defenses to Gray & Becker's suit against them for contractual attorney's fees. Appellants, in their individual capacities, filed a petition in intervention after judgment but during the period the district court retained plenary power. Gray &

Becker moved to sever the appellants' intervention into a new cause. The district court, without adjudicating any claims between appellants and Gray & Becker, severed the appellants and all issues between them and Gray & Becker into a new cause of action. This severed proceeding is the underlying cause in this appeal.

The underlying proceeding

Following the severance, Gray & Becker filed an amended petition and application for injunctive relief as to appellants and third party garnishees, those being various banks holding portions of appellants' federal arbitration award funds. Gray & Becker moved for partial summary judgment to which the appellants responded. The district court granted Gray & Becker's motion and ruled that the fee agreements between the unions and Gray & Becker were enforceable against the appellants and that Gray & Becker was entitled to collect from appellants the contractual attorney's fees in the amount of 33-1/3% of each appellant's portion of the federal arbitration award. After a trial on the merits, the district court rendered a final judgment ruling that (1) each appellant was liable to Gray & Becker for 33-1/3% of each one's portion of the federal arbitration award; (2) each appellant was liable to Gray & Becker for damages of $2000, which represented attorney's fees incurred by Gray & Becker to enforce and collect under the attorney's fee agreements; (3) in the event of a motion for new trial or an appeal, each appellant was liable to Gray & Becker for $5000, which represented attorney's fees Gray & Becker would incur in defending the judgment post-trial; (4) Gray & Becker was awarded postjudgment interest; (5) appellants were enjoined from failing or refusing to pay the 33-1/3% of their arbitration award monies into the registry of the court, disposing of or

diverting 33-1/3% of their portion of the award, or holding or otherwise receiving their portion of the award without paying the 33-1/3% owed to Gray & Becker as contractual attorney's fees; and (6) appellants would take nothing on any of their claims against Gray & Becker.

Discussion

Subject matter jurisdiction

In a late-filed motion, appellants ask this Court to dismiss this appeal and vacate the underlying district court judgment because this Court and the district court lack subject matter jurisdiction over Gray & Becker's claims for contractual attorney's fees. Without citing any authority, appellants contend that the "state district courts are without authority to rule on labor disputes. Labor disputes are absolutely governed by federal law and regulations concerning the administrative system." Further, appellants contend that Gray & Becker's claims for contractual attorney's fees in the underlying district court action is an "appeal of the arbitrator's decisions [that] rests with the FLRA."

Neither this appeal nor the underlying district court action by Gray & Becker is an appeal of the federal arbitrator's decision. Additionally, neither the district court cause nor the appellate cause involves a claim by a union member against its union. The claims at issue in both courts are solely Gray & Becker's claims for its contractual attorney's fees. We overrule appellants' motion to dismiss for want of subject matter jurisdiction.

Severance

In their first issue, appellants contend that the district court abused its discretion in severing into a new district court cause all issues between appellants and Gray & Becker related to Gray & Becker's suit to collect attorney's fees for work it performed for the appellants. Severance of claims rests within the sound discretion of the trial court. *See Liberty Nat'l Fire Ins. Co. v. Akin*, 927 S.W.2d 627, 629 (Tex. 1996) (citing *Guaranty Fed. Sav. Bank v. Horseshoe Operating Co.*, 793 S.W.2d 652, 658 (Tex. 1990)). The trial court abuses its discretion if its decision is arbitrary, unreasonable, and without any reference to guiding rules or principles. *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241-42 (Tex. 1985).

Appellants filed a plea in intervention in the earlier lawsuit because, unlike the other several thousand union member defendants, the appellants did not want to be bound by the settlement agreement related to the contractual attorney's fees. Rather, the appellants preferred to assert their own defenses against Gray & Becker's claims for contractual attorney's fees. The district court's severance of appellants' claims in no way prevented, but rather enabled, the appellants to challenge Gray & Becker's claims against them for contractual attorney's fees on the merits. By granting the severance, the district court allowed appellants to proceed with any defenses to Gray & Becker's claims while enabling the other union members to settle the attorney fee claims against them.

We hold that appellants have failed to show the district court abused its discretion in severing appellants and all issues between them and Gray & Becker related to the attorney's fee agreements between the unions and Gray & Becker. Further, appellants have failed to show that the severance order probably caused an improper

judgment or prevented appellants from presenting their case to the appellate court. *See* Tex. R. App. P. 44.1(a). We overrule appellants' first issue.

Jurisdiction

In their second issue, appellants contend that the district court was without subject matter jurisdiction over the issues related to Gray & Becker's claims for attorney's fees pursuant to its fee agreements with the unions. Appellants contend, without any supporting authority, that Gray & Becker's suit in state district court was a collateral attack on a federal district court's ruling that the FLRA had exclusive jurisdiction over Gray & Becker's claims for attorney's fees.

Appellants contend that the United States District Court's order of dismissal in *Salgado v. Gray & Becker*, a case to which appellants were not parties, held that the FLRA had exclusive jurisdiction over the merits of the attorney's fees dispute. No. C-01-307, (S.D. Tex. Nov. 28, 2001) (not designated for publication). Appellants have failed, however, to direct this Court to any passage in the *Salgado* opinion that reflects the federal district court ruled that the FLRA had exclusive jurisdiction over the merits of Gray & Becker's recovery of contractual attorney's fees.

The *Salgado* court did not address Gray & Becker's claims for attorney's fees and did not rule that the FLRA had exclusive jurisdiction of Gray & Becker's claims against appellants to collect contractual attorney's fees. The *Salgado* court found that the FLRA had exclusive jurisdiction of employee claims against their *unions*. We note that, regarding Gray & Becker's claims for attorney's fees, the *Salgado* court stated, "This does not mean that [Gray & Becker has] no legally enforceable claim against the individual union members and former mem-

bers; they may indeed have one, but this Court is not the forum to decide that issue." *Id.* Appellants provide no statutory or other legal authority to support their contention that the FLRA has exclusive jurisdiction over Gray & Becker's claims for contractual attorney's fees. We overrule appellants' second issue.

Refusal to stay trial proceedings

We next turn to appellants' contention that the district court erred by refusing to stay the underlying proceedings while appellants pursued an interlocutory appeal. *See* Tex. Civ. Prac. & Rem. Code Ann. § 51.014 (West Supp. 2003). Appellants' brief lacks any record citations to pleadings, motions, district court rulings, or specific notices of appeal filed by appellants that relate to this contention. Further, appellants' brief lacks any supporting case law related to this contention. Such an unsupported, general contention is inadequately prepared for this Court to review. *See State Farm Lloyds v. Williams*, 960 S.W.2d 781, 789 (Tex. App.—Dallas 1997, pet. dism'd); Tex. R. App. P. 38.1(h). Because appellants failed to provide any record citations, cite to any relevant facts, or cite to any legal authority supporting this issue, we hold that they have waived this appellate contention. *Id.*; *see also Newsom v. Petrilli*, 919 S.W.2d 481, 484 (Tex. App.—Austin 1996, no writ). In the event their contention is not waived, we hold that appellants have failed to show that the district court's failure to stay proceedings to allow appellants to pursue an interlocutory appeal probably caused the rendition of an improper judgment or affected their ability to present their claims to the appellate court. *See* Tex. R. App. P. 44.1(a). We overrule appellants' third issue.

Venue

Regarding venue, appellants contend first that the district court erred by failing to hear their motion to transfer venue in a timely manner. Second, appellants contend that the district court erred in denying their motion to transfer venue of this cause because (1) venue was proper in Nueces County; (2) none of appellants signed the fee contracts; and (3) Nueces County is the county where all or a substantial part of the events related to the claims occurred. Appellants again fail to cite any legal authority to support their contentions. Failure to cite legal authority to support an appellate issue constitutes a waiver of the issue. *See Newsom*, 919 S.W.2d at 484.

In any event, reviewing the record, paragraph nine of Gray & Becker's first amended petition asserted the following:

> 9. Gray & Becker and the Unions entered into the fee agreements which are the subject and basis of this suit in Austin, Travis County, Texas and as a result of Gonzales, Livengood, and Quintanilla soliciting Gray & Becker in Austin to represent their unions and to enter into the fee agreements. The fee agreements did not become operative and effective unless and until Gray & Becker signed the fee agreements; Gray & Becker signed the fee agreements in Austin, Travis County, Texas. In addition, most of the work (at least 90%) which Gray & Becker has performed in performance of the fee agreements and in performance with the attorney/client relationships which are the subject and basis of this suit has been and continues to be performed in Austin, Travis County, Texas. In addition, [appellants'] performance under the fee agreements (to wit: payment of contractual attorney's fees to

> Gray & Becker) was to have been performed in Travis County, Texas. This Court has previously denied [appellants'] Motion to Transfer Venue and ruled that venue of [Gray & Becker's] claims is proper in Travis County, Texas. In addition, [appellants] have waived [appellants'] objections to venue by affirmatively intervening in this suit. In addition, [appellants] have waived [appellants'] objections to venue by filing [appellants'] answers in this suit prior to, and not subject to, [appellants'] Motion to Transfer Venue.

Venue selection presupposes that the parties to the lawsuit have choices and preferences about where their case will be tried. *See* Tex. Civ. Prac. & Rem. Code Ann. §§ 15.001-.040 (West 2002); *Wilson v. Texas Parks & Wildlife Dep't*, 886 S.W.2d 259, 260 (Tex. 1994) (citing *Maranatha Temple, Inc. v. Enterprise Prod. Co.*, 833 S.W.2d 736, 741 (Tex. App.—Houston [1st Dist.] 1992, writ denied)). Venue may be proper in more than one county under general, mandatory, or permissive venue rules. *Wilson*, 886 S.W.2d at 260. The plaintiff is given the first choice of venue selection in the filing of the la[illegible]t. *Id.* If the plaintiff's choice is not properly ch[illegible]ged through a motion to transfer venue, the prop[illegible]y of venue is fixed in the county chosen by the plaintiff. Tex. Civ. Prac. & Rem. Code Ann. § 15.063 (West 2002); Tex. R. Civ. P. 86. The question of proper venue is raised only if a defendant objects to the plaintiff's venue choice and properly challenges that choice. Tex. R. Civ. P. 86. If a plaintiff chooses a county of proper venue, and the choice is supported by proof as required by Rule 87, no other county can be a proper venue in that case. *Wilson*, 886 S.W.2d at 261; Tex. R. Civ. P. 87. This rule gives effect to the plaintiff's right to select a venue. *Wilson*, 886 S.W.2d at 261.

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In applying these rules, two bases exist for challenging venue: either (1) the county where the proceedings are pending is not a proper county as no permissive venue exists, or (2) mandatory venue lies in another county. *See* Tex. R. Civ. P. 86(3)(a), (b). Appellants' motion to transfer venue did not allege either ground.

All venue facts, when properly pleaded, shall be taken as true unless specifically denied by the adverse party. *See Geochem Tech Corp. v. Verseckes*, 962 S.W.2d 541, 543 (Tex. 1998); Tex. R. Civ. P. 87. At no time during the proceedings have the appellants specifically denied or otherwise controverted the venue facts alleged by Gray & Becker in its amended petition. Further, at no point during the proceedings have appellants urged that venue is mandatory in Nueces County. Appellants urge only that venue would be proper in Nueces County. The district court correctly took as true the venue facts alleged by Gray & Becker, which were supported by the verified affidavit of Brian Bishop, the attorney in charge for Gray & Becker in these proceedings, and determined that venue was proper in Travis County because all or a substantial part of the events giving rise to the claim occurred in Travis County. *See* Tex. Civ. Prac. & Rem. Code Ann. § 15.002(a)(1) (West 2002).

We hold that in the event appellants did not waive their complaints regarding venue, error, if any, did not cause the rendition of an improper judgment. *See* Tex. R. App. P. 44.1(a). We overrule appellants' fourth issue.

Summary Judgment

Appellants also contend that the district court erroneously granted a partial summary judgment in favor of Gray & Becker. Gray & Becker moved for a partial summary judgment seeking to establish as a matter of law: (1) that the attorney's fee agreements entered into

between Gray & Becker and the unions, the exclusive representatives of their members, were enforceable; and (2) that the appellants, union members who received portions of the federal arbitration award, were obligated to pay Gray & Becker 33-1/3% of their portions of the award in accordance with the fee agreements. Gray & Becker asserted several theories in support of its motion including the written contract, *quantum meruit*, *res judicata*, collateral estoppel, quasi-estoppel, and the common fund doctrine. Because the order granting summary judgment did not specify the theory upon which the district court relied, we will affirm the order if any one of the several theories advanced are meritorious. *See State Farm Fire & Cas. Co. v. S.S.*, 858 S.W.2d 374, 380 (Tex. 1993).

The summary judgment evidence established that the federal arbitrator and the FLRA in the underlying arbitration proceeding ruled that appellants were obligated to pay 33-1/3% of their portion of the arbitration award to Gray & Becker as contractual attorney's fees. Additionally, the evidence established that the fee agreements upon which Gray & Becker relied were entered into and executed by the unions' representatives, who are statutorily designated as the exclusive representatives of appellants. *See* 5 U.S.C.A. § 7114 (West 1996). Only through the unions could appellants pursue their asbestos-related grievance claims; that is, appellants lacked any legal standing or authority to pursue these grievances individually or through individual attorneys. Gray & Becker fully performed and continues to perform its services in reliance upon the fee agreements. In 2001, after litigation commenced, all three unions reaffirmed and ratified the fee agreements. As a result of Gray & Becker's efforts, appellants have received their arbitration awards. Gray & Becker's representation of appellants and the fee agreements were matters that were

widely publicized to Corpus Christi Army Depot employees. It is undisputed that appellants did not communicate any objections or challenge Gray & Becker's authority, the Unions' actions or authority, or the fee agreements until *after* Gray & Becker had fully performed under the agreements, the award monies were being distributed, and appellants had accepted the results of Gray & Becker's services. The summary judgment evidence included the arbitrator's September 14, 2001 "Order Concerning Remedy," which provided:

> 33-1/3% contractual attorney's fees I have previously ordered that the employees owe to and shall be paid to Gray & Becker are expenses of litigation incident to administering the contract and to settling grievances and disputes. The 33-1/3% contractual attorney's fees are, therefore, clearly chargeable to the employees as a normal incident of the Unions' exclusive representation.

Absent a prior successful direct challenge to the arbitrator's decision and orders, appellants cannot accept one portion of the arbitrator's order—the award of monies to the unions' members—and yet ignore or disavow another portion of the same arbitrator's order. Thus, appellants cannot now disavow the portion of the arbitrator's decision requiring appellants to pay Gray & Becker attorney's fees in accordance with the fee agreements. *See Newman v. Link*, 889 S.W.2d 288, 289 (Tex. 1994) (citing *Carle v. Carle*, 234 S.W.2d 1002, 1004 (Tex. 1950)).

Further, Gray & Becker's right to collect its contractual attorney's fees from the individual appellants is established as a matter of law based on the doctrine of quasi-estoppel. The principles of quasi-estoppel preclude a party from asserting, to another's disadvantage, a right

inconsistent with a position previously taken. *See Enochs v. Brown*, 872 S.W.2d 312, 317 (Tex. App.—Austin 1994, no writ). Quasi-estoppel applies when it would be unconscionable to allow individuals to maintain a position inconsistent with one in which those individuals have accepted a benefit. *Id.*

In *Enochs*, this Court rejected the argument that a contractual attorney's fee agreement not signed by the client is always unenforceable. In *Enochs*, the minor client's parent was estopped from claiming that the attorney with whom the child's sole managing conservator had executed a contingent attorney's fee agreement was not entitled to the contingent fee pursuant to the agreement because the attorney had performed and the child had accepted, used, and enjoyed the attorney's services and the product of those services. *Id.* (Texas Family Code delegates to sole managing conservator exclusive right to represent child in litigation and fee contract signed by minor client's legal representative was valid).

Federal law delegates to the unions the exclusive right to represent union members in federal arbitration. *See* 5 U.S.C.A. § 7114. At this late date, it would be unconscionable to allow appellants, the beneficiaries of the federal arbitration award negotiated by Gray & Becker, to challenge the fee agreements *only after* they have accepted the benefits of those agreements between their union representatives and the law firm that secured their award. We conclude that, as a matter of law, the fee agreements were enforceable and the appellants were obligated to pay Gray & Becker contractual attorney's fees in the sum of 33-1/3% of their portions of the arbitration award. We overrule appellants' issue contending that the district court erred in granting a partial summary judgment.

Evidentiary challenges to attorney's fees

Appellants also raise contentions that directly attack the evidentiary support for the award of 33-1/3% as the *amount* of contractual attorney's fees awarded, as well as the additional award to Gray & Becker of attorney's fees in the amount of $2000 per appellant to prosecute the underlying enforcement and collection proceeding through trial and the award of $5000 per appellant in the event appellants pursue a new trial or appeal.

Appellants first contend that Gray & Becker failed to prove that the specified sum of 33-1/3% of each appellant's portion of the arbitration award was a reasonable fee. During the trial on the merits, Gray & Becker presented evidence regarding its fees for pursuing the appellants' asbestos claims. Brian Bishop, the Gray & Becker attorney primarily responsible for representing the union members since he commenced the federal grievance proceedings, testified about Gray & Becker's history and involvement in the union members' federal grievance process, in the federal arbitration, and in the many lawsuits that followed both in federal and state court. Bishop testified about his background in the legal profession and about his hourly rate. Appellants' cross-examination focused only on the validity of the fee agreements, an issue that the district court previously determined by summary judgment. At trial, appellants never questioned the amount of attorney's fees sought by Gray & Becker and ultimately awarded in this case.

Gray & Becker's evidence related to the amount of contractual attorney's fees was sufficient to support the factors discussed in depth in *Arthur Anderson & Co. v. Perry Equipment Corp.*, 945 S.W.2d 812, 818 (Tex. 1997). No contrary evidence was presented. We hold that the district court did not err in awarding attorney's fees in accordance with Gray & Becker's evidence. We overrule

appellants' contention that the amount of the contractual attorney's fees, 33-1/3% of each appellant's share of the arbitration award, was unsupported by the evidence.

Appellants also contend that there was no evidence or insufficient evidence to support the district court's award to Gray & Becker of attorney's fees in the amount of $2000 per appellant to prosecute the underlying action and $5000 per appellant in the event appellants seek a post-trial review.

Gray & Becker presented evidence that the amount of the attorney's fees was greatly affected by the vexatious actions of appellants and appellants' counsel throughout the underlying proceeding. Bishop testified that appellants had filed (1) a petition in intervention in an earlier proceeding where, but for their intervention, they would have been considered participants in a settlement regarding the contractual attorney's fees at issue; (2) a multitude of various types of motions; and (3) petitions for writ of mandamus in the Third Court of Appeals as well as the Texas Supreme Court. Bishop also testified that the amount of attorney's fees related to this collection proceeding was greatly affected by problems during discovery caused by appellants and their counsel when they failed to appear for depositions, refused to produce documents, and failed to abide by court orders. Bishop testified that based on his experience and his familiarity with all of the related federal and state proceedings, "$2000 per [appellant] in this case is an amount which is reasonable and which has been necessary to prosecute this case to final judgment." Bishop also testified that in the event Gray & Becker prevailed on its claims and appellants prosecuted a motion for new trial or an appeal, an additional $5000 per appellant is a reasonable amount necessary to defend Gray & Becker's judgment. There was no testimony or evidence presented to the

contrary. Further, at trial, appellants never objected or challenged Gray & Becker's evidence related to attorney's fees.

We hold legally and factually sufficient evidence supports the district court's award of attorney's fees in the sum of $2000 per appellant to prosecute this case through trial and the award of $5000 per appellant in the event appellants seek a new trial or an appeal. We overrule appellants' seventh contention.

Conclusion

Having addressed all of appellants' contentions, we affirm the district court's judgment.

Marilyn Aboussie, Chief Justice

Before Chief Justice Aboussie, Justices B. A. Smith and Yeakel

Affirmed

Filed: December 12, 2002

IN THE DISTRICT COURT OF
TRAVIS COUNTY, TEXAS
200TH JUDICIAL DISTRICT

Cause No. GN 104188
(Severed from Cause No. GN 101682)

GRAY & BECKER, P.C.,

Plaintiff,

—v.—

GARY LEE ADAMS, *ET AL.*,

Defendant Intervenors.

FINAL JUDGMENT

On the 7th day of March 2002, came on to be heard trial on the merits in the above-styled and captioned cause. Plaintiff appeared by and through its attorney of record. Defendants Intervenors appeared by and through Defendant Intervenors' attorney of record.

The Court, having received and considered the parties' pleadings, the evidence submitted, and the argument and authority submitted, finds as follows:

1. This Court has jurisdiction as to the parties and the subject matter.

2. Defendant Intervenors appeared in this cause in their individual capacities through interventions filed by Defendant Intervenors in Cause No. GN1 01682 originally styled *Gray & Becker v. Quintanilla and Gonzales,* subsequently restyled *Gray & Becker v. Sheldon, et al.*

3. On 12/14/01, Plaintiff filed Plaintiffs' First Supplemental Petition and Application for Injunctive Relief alleging and asserting Plaintiff's claims against Defendant Intervenors individually i.e. separate, apart from, and independent of Plaintiff's claims against Defendant Intervenors as members of the classes certified by the Court in the Court's 11/9/01 Order Certifying the Class.

4. On 12/20/01, this Court entered orders severing Defendant Intervenors' interventions and claims, Plaintiff's claims against Defendant Intervenors' claims and actions against Defendant Intervenors individually, and this Court's 11/20/01 Judgment as to Defendant Intervenors. The severed cause was and is styled *Gray & Becker v. Adams, et al.*, Cause No. GN1 04188.

5. On 12/28/01, Gray & Becker filed Plaintiff's Motion for Partial Summary Judgment seeking judgment as to each individual Defendant Intervenor (irrespective of, and separate and apart from, the class action final judgment) in the *Gray & Becker v. Gary Adams, Defendant Intervenors* case. On 2/20/02, the Travis County District Court granted Gray & Becker's Motion for Summary Judgment and entered judgment against Defendant Intervenors *individually* (not as class members) for 33-1/3% of their Award recovery. The 2/20/02 summary judgment order specifically modifies the class action final judgment as to Defendant Intervenors and rendered Defendant Intervenors' challenges to the class action settlement and final judgment moot:

6. Gray & Becker is entitled to collect, and Defendant Intervenors are liable to Gray & Becker, in the amount of 33-1/3% of each of the Defendant Intervenors' previous and future recovery pursuant to the arbitration award (the "Award) in that certain arbitration FMCS No. 98-09877 styled AFGE Local 2142, IAMAW Lodge 2049, and NFFE Local 797 and Department of the Army, Corpus Christi Army Depot, Corpus Christi, Texas.

7. The amount of the Back Pay recovery that each Defendant Intervenors have received and been paid under the arbitration Award (to-date), and the amount of the 33-1/3% contractual attorney's fees which each Defendant Intervenor owes to Gray & Becker (and the specific amount of Gray & Becker's damages as to each Defendant Intervenor) are as follows:

Defendant Intervenor:	Defendant Intervenor's gross recovery under the arbitration Award:	Amount of the 33-1/3% contractual attorney's fees owed to Gray & Becker:
ADAMS GARY LEE	$45,893.64	$15,297.88
ALFARO EVARISTO B	$24,987.20	$8,329.07
ALLRED RONNY GLEN	$17,584.25	$5,861.42
ALMAGUER FELIX C	$37,493.11	$12,497.70
ALVARADO VERONICA RAMIREZ	$44,869.02	$14,956.34
AMADOR MIGUEL V	$37,664.92	*$3,138.74
ANAYA REYNALDO M	$35,072.53	$11,690.84
ANDERSON PHIL ALAN	$48,173.23	$16,057.74
ANDREWS BRUCE STACY	$32,886.71	$10,962.24
ARMENDARIZ GUILLERMO F	$33,390.00	$11,130.00
ARREOLA RUBEN	$41,663.28	$13,887.76
AYALA ALEJANDRO a/k/a AYALA ALEXANDER F.	$19,951.17	$6,650.39
AYCOCK RONALD JAMES	$34,514.02	$11,504.67

Defendant Intervenor:	Defendant Intervenor's gross recovery under the arbitration Award:	Amount of the 33-1/3% contractual attorney's fees owed to Gray & Becker:
BARRAZA JR MARGARITO	$41,145.75	$13,715.25
BENAVIDEZ HIPOLITO L	$41,618.47	$13,872.82
BIRMINGHAM LLOYD L	$33,279.87	$11,093.29
BRANDON JOHN ANTHONY	$37,087.73	$12,362.58
BULCEN JOSE G	$36,342.74	$12,114.25
BURDETT FRANCIS C	$41,797.97	$13,932.66
CABALLERO RONALD	$36,917.18	$12,305.73
CAMPOS RAMIRO F	$42,902.00	$14,300.67
CANALES ARNOLDO M	$44,800.98	$14,933.66
CANO EUSEBIO	$44,886.65	$14,962.22
CANTU JOHNNY J	$19,395.68	$6,465.23
CANTU JR IGNACIO	$37,334.63	$12,444.88
CANTU ROBERT M	$6,813.87	$2,271.29
CARPENTER JOHN T	$45,800.30	$15,266.77
CARREON EDELMIRA R	$33,220.18	$11,073.39
CARTER CHARLES G	$47,347.89	$15,782.63
CASAS PERFECTO NOE	$39,611.05	$13,203.68
CASTILLO LUIS CHAPA	$38,448.96	$12,816.32
CAVAZOS JR SABAS	$39,888.27	$13,296.09
CAVAZOS VALDEMAR	$37,884.40	$12,628.13
CERDA GILBERT M	$17,782.97	$5,927.66
CERVERA JR ALFRED H	$17,850.14	$5,950.05
COLLIER JR A J	$36,209.14	$12,069.71
CORDOVA CRUZ G	$32,569.08	$10,856.36
CORDOVA MARGARET	unknown	33⅓% of Defendant Intervenor's Award recovery
CORRAL KAY L	$43,092.43	$14,364.14

Defendant Intervenor:	Defendant Intervenor's gross recovery under the arbitration Award:	Amount of the 33-1/3% contractual attorney's fees owed to Gray & Becker:
CRAIG FLORENCE N	$37,411.13	$12,470.38
DAILEY TOM M	$42,845.40	$14,281.80
DAVILA DONALDO	$40,847.04	$13,615.68
DAVILA GILBERT	$45,883.71	$15,294.57
DELAGARZA JR FELIBERTO	$44,961.90	$14,987.30
DELAGARZA RICARDO V	$36,719.98	$12,239.99
DELAROSA AGUSTIN	$44,205.00	$14,735.00
DELEON JESUS M	$42,526.24	$14,175.41
DELOSSANTOS ARNOLD	$36,942.82	$12,314.27
DELOSSANTOS OSCAR	$37,915.70	*3,159.65
DELOSSANTOS VALENTIN	$38,071.15	$12,690.38
DIAZ BERNARDO	$37,447.19	$12,482.40
DIMAS ALFRED THOMAS	$40,118.78	$13,372.93
DUNNE OSCAR P	$35,708.78	$11,902.93
ECHOLES JR HOMER D	$36,057.84	*$3,004.82
ELIZARDO ABEL B	$40,509.36	$13,503.12
ELIZONDO ALBERT	$37,594.88	$12,531,63
ELIZONDO ALFREDO	$40,866.11	$13,622.04
ELLINGER BARBARA K	$20,774.06	$6,924.69
EFPERSON JOHN B	$46,198.30	$15,399.43
ESPINOZA DAVID	$40,122.89	$13,374.30
ESTRADA ELADO a/k/a ESTRADA HELADIO	$32,499.80	$10,833.27
FIGIROVA PEDRO M	$41,053.57	$13,684.52
FLEMING CHARLES T	$36,384.69	$12,128.23
FLORES ALBERT	$43,988.14	$14,662.71
FONSECA JOSE RICARDO	$45,732.53	$15,244.18
FUENTES RUSEN	$42,186.76	$14,062.25
GALLARDO HECTOR	$44,187.92	*$3,682.33
GAMEZ MANUEL	$37,982.46	$12,660.82
GARCIA ABEL	$44,107.37	$14,702.46

Defendant Intervenor:	Defendant Intervenor's gross recovery under the arbitration Award:	Amount of the 33-1/3% contractual attorney's fees owed to Gray & Becker:
GARCIA ALFREDO	$42,012.01	$14,004.00
GARCIA DANIEL ROBERTO	$42,160.67	$14,053.56
GARCIA EVARISTO	$7,580.99	$2,527.00
GARCIA JR ANDRES	$43,533.01	$14,511.00
GARCIA LAURIANO B	$41,681.45	$13,893.82
GARCIA VICTOR	$46,121.83	$15,373.94
GARZA ABELARDO	$36,976.70	$12,325.57
GARZA ARMANDO M	$33,361.68	$11,120.56
GARZA CARLOS G	$39,621.38	$13,207.13
GARZA JR ALFREDO B	$39,064.18	$13,021.39
GARZA NOE	$43,362.45	$14,454.15
GARZA RAUL B	$41,553.09	$13,851.03
GARZA RUDY	$44,670.29	$14,890.10
GOMEZ GUSTAVO	$22,665.07	$7,555.02
GOMEZ ROBERT F	$18,524.67	$6,174.89
GONZALES JR CANDELARIO	$45,266.28	$15,088.76
GONZALES RAMIJIO	$10,504.91	$3,501.64
GONZALEZ DAVID	$36,425.58	$12,141.86
GONZALEZ III MANUEL	$42,847.29	$14,282.43
GONZALEZ JAVIER	$39,241.30	$13,080.43
GONZALEZ RUBEN	$44,504.82	$14,834.94
GRAVES JR RUFUS	$40,638.57	$13,546.19
GRIGSBY JR HARRY L	$38,947.42	$12,982.47
GUERRA BALDEMAR	$38,160.85	$12,720.26
GUERRA JR EDUARDO G	$36,891.94	$12,297.31
GUERRERO JR PEDRO	$26,824.19	$8,941.40
GUTIERREZ PATRICIA	$37,683.92	$12,561.31
GUTIERREZ RODOLFO	$36,315.84	$12,105.28
GUZMAN ERNEST	$8,738.55	$2,912.85
GUZMAN JR FRANCISCO	$42,867.27	$14,289.09

Defendant Intervenor:	Defendant Intervenor's gross recovery under the arbitration Award:	Amount of the 33-1/3% contractual attorney's fees owed to Gray & Becker:
HADDOCK PHILLIP E	$36,983.03	$12,327.68
HALL GLORIA HERNANDEZ	$38,398.30	$12,799.43
HARRIS JAMES R	$35,061.88	$11,687.29
HERNANDEZ EDWARD	$38,412.21	$12,804.07
HERNANDEZ MARCUS	$17,759.48	$5,919.83
HINOJOSA ISMAEL D	$38,187.22	$12,729.07
HUTCHISON LESLIE A	$19,588.78	$6,529.59
JOHNSON MANUEL D	$39,813.22	$13,271.07
KLEIN FREDRIC B	$17,752,55	*$1,479.38
KRAUSE PAUL C	$32,853.42	$10,951.14
KRAUSE ROGER HARRY	$40,261.38	$13,420.46
LANDA JOE LUIS	$41,012.59	$13,670.36
LARRIVEE GERALD R	$38,041,7S	$12,680.59
LEE JOE RICHARD	$41,190.48	$13,730.16
LERMA RAOUL ARNOLD	$40,702.12	$13,567.37
LONG PATRICIA A	$37,319.24	$12,439.75
LONGORIA JR MATIAS	$41,739.19	$13,913.06
LOPEZ DANNY	$41,348.15	$13,782.72
LOPEZ JOSE F	$42,998.04	$14,332.68
LOPEZ JR FRANCISCO	$39,581.46	$13,193.82
LOPEZ JR GENARO	$9,765.42	$3,255.14
LOPEZ RICARDO	$42,898.71	$14,299.57
LOPEZ ROEL A	$45,502.41	$15,167.47
LOPEZ RUBEN M	$37,940.15	$12,646.72
LOZANO JUSTO	$41,177.55	$13,725.85
MALDONADO JUAN A	$32,431.79	$10,810.60
MANUEL JOYCE L	$34,761.71	$11,587.24
MAR SANTIAGO	$36.980.83	$12,326.94
MARINES ROJAS ELSA	$38,826.04	$12,942.01
MARSHALL MARVIN F	$35,511.97	$11,837.32
MARTINEZ ARISTEO B	$40,053.45	$13,351.15

Defendant Intervenor:	Defendant Intervenor's gross recovery under the arbitration Award:	Amount of the 33-1/3% contractual attorney's fees owed to Gray & Becker:
MARTINEZ ELISEO G	$40,040.92	*$3,336.74
MARTINEZ JR GERONIMO	$44,037.01	*$3,669.75
MARTINEZ JR JOSE M	$42,276.57	$14,092.19
MARTINEZ NICOLAS NMN	$41,574.67	$13,858.22
MARTINEZ OVIDIO V	$49,070.03	$16,356.68
MARTINEZ RENE	$44,060.84	$14,686.95
MARTINEZ ROEL R	$41,047.16	$13,682.39
MARTINEZ ROLANDO H	$43,705.02	$14.568.34
MARTINEZ SANTOS	$22,071.54	$7,357.18
MARTINEZ THELMA M	$7,761.84	$2,587.28
MAYES MARCIA L	$32,562.81	$10,854.27
MCGEE THOMAS EDWARD	$40,121.72	$13,373.91
MEDRANO ESTANISLADO	$41,627.27	$13,875.76
MENDOZA VICTOR	$34,914.45	$11,638.15
MOLINA HECTOR	$36,632.76	$12,210.92
MONTGOMERY ROBERT SCOTT	$37,750.07	$12,583.36
MORALES EDWARD MARIO	$43,467.33	$14,489.11
MORENO JR ROGELIO	$35,505.07	$11,835.02
MORIN JR JUAN O	$41,112.57	$13,704.19
NARANJO GRACE M	$38,114.77	$12,704.92
NELSON DONALD M	$37,892.76	$12,630.92
NELSON JR ROBERT J	$41,615.14	$13,871.71
NETEK ANTHONY V	$40,881.67	*$3,406.80
NOYOLA ALEJANDRO S	$46,621.29	$15,540.43
OBRIEN ERVIN W	$24,522.95	$8,174.32
OROPEZ III JUAN	$46,390.47	$15,463.49
ORTIZ ARMANDO A	$39,000.69	$13,000.23
PAEZ NOE M	$32,890.08	$10,963.36
PARSONS JERRY WAYNE	$37,004.17	$12,334.72
PENA CARLOS	$46,758.12	*$3,896.51

Defendant Intervenor:	Defendant Intervenor's gross recovery under the arbitration Award:	Amount of the 33-1/3% contractual attorney's fees owed to Gray & Becker:
PENA CARLOS M	$40,243.12	$13,414.37
PENA FLORENTINO B	$35,787.56	$11,929.19
PENA MANUEL P	$37,972.46	$12,657.49
PERALEZ JESSE	$41,791.77	$13,930.59
PEREZ CARLOS	$46,829.14	$15,609.71
PEREZ JR HELIO	$43,967.29	$14,655.76
PEREZ MANUEL	$11,384.77	$3,794.92
PEREZ MARGARET I	$30,210.80	$10,070.27
PEREZ RAMIRO	$43,685.50	$14,561.72
PERKINS LENORE F	$31,454.55	$10,484.85
PERKINS ROBERT WILLIAM	$34,533.65	$11,511.22
PHILLIPS JR FLENOY R	$39,122.07	$13,040.69
PRYOR NOLAN E	$43,881.44	$14,627.15
QUINTANILLA JESUS F	$33,367.97	$11,122.66
RAMIREZ JR FELIPE	$36,707.77	$12,235.92
RAMIREZ JR PEDRO	$41,608.49	$13,869.50
RAMIREZ RAUL ROLDAN	$39,961.82	$13,320.61
RAMIREZ ROBERT DAVID	$45,162.48	$15,054.16
RAMIREZ ROBERTO NMN	$41,111.17	$13,703.72
RAMON RUBEN A	$37,217.74	$12,405.91
RAMOS RAMON T	$35,746.43	$11,915.48
RAMOS VICTOR H	$30,513.82	*$2,542.82
RAMSEY LYNDA K	$29,025.96	*$2,418.83
REYES RAUL	$43,778.83	$14,592.94
REYNA JR EULALIO	$35,084.22	$11,694.74
RICE ALAN B	$44,305.82	$14,768.61
RIGGINS MICHAEL ALAN	$41,389.89	*$3,449.16
RINCON RICARDO	$48,106.20	*$4,008.85
RITTGERS ERIC R	$40,339.05	$13,446.35
RODRIGUEZ ABEL G	$40,599.01	$13,533.00

Defendant Intervenor:	Defendant Intervenor's gross recovery under the arbitration Award:	Amount of the 33-1/3% contractual attorney's fees owed to Gray & Becker:
RODRIGUEZ ANTONIO	$41,985.23	$13,995.08
RODRIGUEZ JR ROBERT R	$33,767.08	$11,255.69
RODRIGUEZ RICARDO	$41,205.66	$13,735.22
RODRIGUEZ ROBERT	$39,029.64	$13,009.88
RODRIGUEZ ROBERTO	$39,169.63	$13,056.54
RUIZ TRINIDAD	$36,246.14	$12,082.05
SAENZ JOSE ROBERTO	$38,923.89	$12,974.63
SALDANA SANTOS V	$38,042.84	$12,680.95
SALINAS ANNA M	$41,729.61	$13,909.87
SALINAS JOSE R	$37,647.17	$12,549.06
SANCHEZ ERNEST H	$37,949.17	$12,649.72
SANTOS ROGELIO	$39,488.70	$13,162.90
SEAY C ANNETTE	$39,255.78	$13,085.26
SERNA SAMUEL	$41,777.37	$13,925.79
SHELTON ALFRED EARL	$39,723.29	$13,241.10
SHELTON JUDGE R	$44,117.62	$14,705.87
SIDDALL FRANK M	$37,145.46	$12,381.82
SILVAS ROBERTO	$43,952.41	$14,650.80
SOLIZ PETE	$44,442.51	$14,814.17
SOTO CHRISTOPHER JAMES	$34,853.98	$11,617.99
SPEAR DOUGLAS BRYAN	$41,849.19	$13,949.73
SUAREZ JR RICHARD	$43,453.96	*$3,621.16
TAGLE FELIX S	$38,374.69	$12,791.56
TANGUMA ALEJANDRO G	$40,838.76	$13,612.92
TEAGLE VERNON NORBERT	$42,405.84	$14,135.28
THOMAS JR LUCIUS	$28,291.12	$9,430.37
TILLEY LILANN W	$34,784.24	$11,594.75
TIPTON LARRY W	$42,145.36	$14,048.45
TORRES DAVID J	$29,639.40	$9,879.80
TORRES JOSE	$40,981.73	$13,660.58

Defendant Intervenor:	Defendant Intervenor's gross recovery under the arbitration Award:	Amount of the 33-1/3% contractual attorney's fees owed to Gray & Becker:
TORRES JR EUGENE G	$23,993.43	$7,997.81
TREJO RUBEN ESPARZA	$42,787.35	$14,262.45
TREVINO EMILY S	$43,461.11	$14,487.04
TREVINO GABRIEL S	$35,884.56	$11,961.52
TREVINO JOE RAYMOND	$39,878.20	$13,292.73
TREVINO NICOLAS R	$41,543.96	$13,847.99
TURNER WENDELL NORRIS	$37,914.88	$12,638.29
VALDEZ JR EDMUNDO	$40,695.49	$13,565.16
VARGAS JR PEDRO H	$39,378.96	$13,126.32
VASQUEZ JOE ALCALA	$34,538.57	$11,512.86
VASQUEZ TERESA	$39,526.51	$13,175.50
VEGA JUAN R	$44,500.02	$14,833.34
VELA BETTY JO	$41,253.49	$13,751.16
VELA JR FIDEL	$46,386.00	$15,462.00
VELASQUEZ JR ELPIDIO	$39,213.31	$13,071.10
VERASTIQUI RENE	$35,533.28	$11,844.43
VERASTIQUI RICARDO MARIO	$39,555.81	$13,185.27
VIDAL AMANDO	$43,827.91	$14,609.30
VILLARREAL ARTURO	$42,433.38	$14,144.46
VILLARREAL JR LEOBARDO	$37,092.08	$12,364.03
VILLARREAL RUBEN J	$18,645.21	$6,215.07
WALTON JON SCOTT	$39,799.46	$13,266.49
WEATHERSBY JESSE R	$38,611.91	$12,870.64
WEEKS KENNETH A	$42,566.10	$14,188.70
WEST GERMAN L	$35,999.11	$11,999.70
WILLIAMS ED	$47,844.49	$15,948.16
WILLIAMS JAMES E	$18,031.36	$6,010.45
WILLIAMS JR ISAAC V	$39,124.76	*$3,260.40

Defendant Intervenor:	Defendant Intervenor's gross recovery under the arbitration Award:	Amount of the 33-1/3% contractual attorney's fees owed to Gray & Becker:
YANDELL VERL	$40,376.72	$13,458.91
YANEZ ALONZO	$40,409.55	$13,469.85
ZARAGOZA LAZARO P	$40,857.40	$13,619.13
ZARATE REYNALDO	$44,925.40	$14,975.13

* The Defendant Intervenors so indicated paid Gray & Becker 25% contractual attorney's fees and said payment credited against the 33-1/3% owed to Gray & Becker.

8. It is, therefore, ORDERED that Gray & Becker shall have and recover judgment for actual damages against Defendant Intervenors individually in the amount of the 33-1/3% contractual attorney's fees owed to Gray & Becker as specified herein.

9. It is further ORDERED that Defendant Intervenors shall take nothing as to any and all claims or causes of action which Defendant Intervenors have raised or which Defendant Intervenors could have raised or asserted against Gray & Becker in conjunction with: (a) Gray & Becker's representation of the Unions or the prosecution of the employees' claims in the underlying arbitration; (b) Gray & Becker's actions or omissions in connection with enforcement and collection of the contractual attorney's fees owed to Gray & Becker; or (c) any other matter which Defendant Intervenors have raised or could raise against Gray & Becker associated, directly or indirectly, with the facts and circumstances of the allegations of Gray & Becker and/or Defendant Intervenors.

10. In addition, Plaintiff Gray & Becker is entitled to recover reasonable and necessary attorneys' fees in the amount of $2,000.00 from each Defendant representing

reasonable attorneys' fees incurred through prosecution of Plaintiff's claims through Judgment. Plaintiff is also awarded attorneys' fees in the amount of $5,000.00 as to each Defendant Intervenor in the event the Defendant Intervenor files and prosecutes a Motion for New Trial or an appeal of this judgment as reasonable attorneys' fees that will necessarily be incurred in defense of a Motion for New Trial or appeal.

It is, therefore, ORDERED that Plaintiff shall have and recover judgment against Defendant Intervenors for actual damages and reasonable attorneys' fees in the total amount of:

Defendant Intervenor:

ADAMS GARY LEE	$17,297.88
ALFARO EVARISTO B	$10,329.07
ALLRED RONNY GLEN	$7,861.42
ALMAGUER FELIX C	$14,497.70
ALVARADO VERONICA RAMIREZ	$16,956.34
AMADOR MIGUEL V	*$5,138.74
ANAYA REYNALDO M	$13,690.84
ANDERSON PHIL ALAN	$18,057.74
ANDREWS BRUCE STACY	$12,962.24
ARMENDARIZ GUILLERMO F	$13,130.00
ARREOLA RUBEN	$15,887.76
AYALA ALEJANDRO a/k/a AYALA ALEXANDER F.	$8,650.39
AYCOCK RONALD JAMES	$13,504.67
BARRAZA JR MARGARITO	$15,715.25
BENAVIDEZ HIPOLITO L	$15,872.82
BIRMINGHAM LLOYD L	$13,093.29
BRANDON JOHN ANTHONY	$14,362.58
BULCEN JOSE G	$14,114.25
BURDETT FRANCIS C	$15,932.66

Defendant Intervenor:

CABALLERO RONALD	$14,305.73
CAMPOS RAMIRO F	$16,300.67
CANALES ARNOLDO M	$16,933.66
CANO EUSEBIO	$16,962.22
CANTU JOHNNY J	$8,465.23
CANTU JR IGNACIO	$14,444.88
CANTU ROBERT M	$4,271.29
CARPENTER JOHN T	$17,266.77
CARREON EDELMIRA R	$13,073.39
CARTER CHARLES G	$17,782.63
CASAS PERFECTO NOE	$15,203.68
CASTILLO LUIS CHAPA	$14,816.32
CAVAZOS JR SABAS	$15,296.09
CAVAZOS VALDEMAR	$14,628.13
CERDA GILBERT M	$7,927.66
CERVERA JR ALFRED H	$7,950.05
COLLIER JR A J	$14,069.71
CORDOVA CRUZ G	$12,856.36
CORDOVA MARGARET	33⅓% of Defendant Intervenor's Award recovery
CORRAL KAY L	$16,364.14
CRAIG FLORENCE N	$14,470.38
DAILEY TOM M	$16,281.80
DAVILA DONALDO	$15,615.68
DAVILA GILBERT	$17,294.57
DELAGARZA JR FELIBERTO	$16,987.30
DELAGARZA RICARDO V	$14,239.99
DELAROSA AGUSTIN	$16,735.00
DELEON JESUS M	$16,175.41
DELOSSANTOS ARNOLD	$14,314.27
DELOSSANTOS OSCAR	*$5,159.65
DELOSSANTOS VALENTIN	$14,690.38
DIAZ BERNARDO	$14,482.40

Defendant Intervenor:

DIMAS ALFRED THOMAS	$15,372.93
DUNNE OSCAR P	$13,902.93
ECHOLES JR HOMER D	*$5,004.82
ELIZARDO ABEL B	$15,503.12
ELIZONDO ALBERT	$14,531.63
ELIZONDO ALFREDO	$15,622.04
ELLINGER BARBARA K	$8,924.69
EPPERSON JOHN B	$17,399.43
ESPINOZA DAVID	$15,374.30
ESTRADA ELADO a/k/a ESTRADA HELADIO	$12,833.27
FIGIROVA PEDRO M	$15,684.52
FLEMING CHARLES T	$14,128.23
FLORES ALBERT	$16,662.71
FONSECA JOSE RICARDO	$17,244.18
FUENTES RUBEN	$16,062.25
GALLARDO HECTOR	*$5,682.33
GAMEZ MANUEL	$14,660.82
GARCIA ABEL	$16,702.46
GARCIA ALFREDO	$16,004.00
GARCIA DANIEL ROBERTO	$16,053.56
GARCIA EVARISTO	$4,527.00
GARCIA JR ANDRES	$16,511.00
GARCIA LAURIANO B	$15,893.82
GARCIA VICTOR	$17,373.94
GARZA ABELARDO	$14,325.57
GARZA ARMANDO M	$13,120.56
GARZA CARLOS G	$15,207.13
GARZA JR ALFREDO B	$15,021.39
GARZA NOE	$16,454.15
GARZA RAUL B	$15,851.03
GARZA RUDY	$16,890.10
GOMEZ GUSTAVO	$9,555.02
GOMEZ ROBERT F	$8,174.89

Defendant Intervenor:

GONZALES JR CANDELARIO	$17,088.76
GONZALERS RAMIJIO	$5,501.64
GONZALEZ DAVID	$14,141.86
GONZALEZ III MANUEL	$16,282.43
GONZALEZ JAVIER	$15,080.43
GONZALEZ RUBEN	$16,834.94
GRAVES JR RUFUS	$15,546.19
GRIGSBY JR HARRY L	$14,982.47
GUERRA BALDEMAR	$14,720.28
GUERRA JR EDUARDO G	$14,297.31
GUERRERO JR PEDRO	$10,941.40
GUTIERREZ PATRICIA	$14,561.31
GUTIERREZ RODOLFO	$14,105.28
GUZMAN ERNEST	$4,912.55
GUZMAN JR FRANCISCO	$16,289.09
HADDOCK PHILLIP E	$14,327.68
HALL GLORIA HERNANDEZ	$14,799.43
HARRIS JAMES R	$13,687.29
HERNANDEZ EDWARD	$14,804.07
HERNANDEZ MARCUS	$7,919.83
HINOJOSA ISMAEL D	$14,729.07
HUTCHISON LESLIE A	$8,529.59
JOHNSON MANUEL D	$15,271.07
KLEIN FREDRIC B	*$3,479.38
KRAUSE PAUL C	$12,951.14
KRAUSE ROGER HARRY	$15,420.46
LANDA JOE LUIS	$15,670.86
LARRIVEE GERALD R	$14,680.59
LEE JOE RICHARD	$15,730.16
LERMA RAOUL ARNOLD	$15,567.37
LONG PATRICIA A	$14,439.75
LONGORIA JR MATIAS	$15,913.06
LOPEZ DANNY	$15,782.72
LOPEZ JOSE F	$16,332.68

Defendant Intervenor:

LOPEZ JR FRANCISCO	$15,193.82
LOPEZ JR GENARO	$5,255.14
LOPEZ RICARDO	$16,299.57
LOPEZ ROEL A	$17,167.47
LOPEZ RUBEN M	$14,646.72
LOZANO JUSTO	$15,725.85
MALDONADO JUAN A	$12,810.60
MANUEL JOYCE L	$13,587.24
MAR SANTIAGO	$14,326.94
MARINES ROJAS ELSA	$14,942.01
MARSHALL MARVIN F	$13,837.32
MARTINEZ ARISTEO B	$15,351.15
MARTINEZ ELISEO G	*$5,336.74
MARTINEZ JR GERONIMO	$5,669.75
MARTINEZ JR JOSE M	$16,092.19
MARTINEZ NICOLAS NMN	$15,858.22
MARTINEZ OVIDIO V	$18,356.68
MARTINEZ RENE	$16,686.95
MARTINEZ ROEL R	$15,682.39
MARTINEZ ROLANDO H	$16,568.34
MARTINEZ SANTOS	$9,357.18
MARTINEZ THELMA M	$4,587.28
MAYES MARCIA L	$12,854.27
MCGEE THOMAS EDWARD	$15,373.91
MEDRANO ESTANISLADO	$15,875.76
MENDOZA VICTOR	$13,638.15
MOLINA HECTOR	$14,210.92
MONTGOMERY ROBERT SCOTT	$14,583.36
MORALES EDWARD MARIO	$16,489.11
MORENO JR ROGELIO	$13,835.02
MORIN JR JUAN O	$15,704.19
NARANJO GRACE M	$14,704.92
NELSON DONALD M	$14,630.92
NELSON JR ROBERT J	$15,871.71

Defendant Intervenor:

NETEK ANTHONY V	*$5,406.80
NOYOLA ALEJANDRO S	$17,540.43
OBRIEN ERVIN W	$10,174.32
OROPEZ III JUAN	$17,463.49
ORTIZ ARMANDO A	$15,000.23
PAEZ NOE M	$12,963.36
PARSONS JERRY WAYNE	$14,334.72
PENA CARLOS	*$5,896.51
PENA CARLOS M	$15,414.37
PENA FLORENTINO B	$13,929.19
PENA MANUEL P	$14,657.49
PERALEZ JESSE	$15,930.59
PEREZ CARLOS	$17,609.71
PEREZ JR HELIO	$16,655.76
PEREZ MANUEL	$5,794.92
PEREZ MARGARET I	$12,070.27
PEREZ RAMIRO	$16,561.72
PERKINS LENORE F	$12,484.85
PERKINS ROBERT WILLIAM	$13,511.22
PHILLIPS JR FLENOY R	$15,040.69
PRYOR NOLAN E	$16,627.15
QUINTANILLA JESUS F	$13,122.66
RAMIREZ JR FELIPE	$14,235.92
RAMIREZ JR PEDRO	$15,869.50
RAMIREZ RAUL ROLDAN	$15,320.61
RAMIREZ ROBERT DAVID	$17,054.16
RAMIREZ ROBERTO NMN	$15,703.72
RAMON RUBEN A	$14,405.91
RAMOS RAMON T	$13,915.48
RAMOS VICTOR H	*$4,542.82
RAMSEY LYNDA K	*$4,418.83
REYES RAUL	$16,592.94
REYNA JR EULALIO	$13,694.74
RICE ALAN B	$16,768.61

Defendant Intervenor:

RIGGINS MICHAEL ALAN	*$5,449.16
RINCON RICARDO	*$6,008.85
RITTGERS ERIC R	$15,446.35
RODRIGUEZ ABEL G	$15,533.00
RODRIGUEZ ANTONIO	$15,995.08
RODRIGUEZ JR ROBERT R	$13,255.69
RODRIGUEZ RICARDO	$15,735.22
RODRIGUEZ ROBERT	$15,009.88
RODRIGUEZ ROBERTO	$15,056.54
RUIZ TRINIDAD	$14,082.05
SAENZ JOSE ROBERTO	$14,974.63
SALDANA SANTOS V	$14,680.95
SALINAS ANNA M	$15,909.87
SALINAS JOSE R	$14,549.06
SANCHEZ ERNEST H	$14,649.72
SANTOS ROGELIO	$15,162.90
SEAY C ANNETTE	$15,085.26
SERNA SAMUEL	$15,925.79
SHELTON ALFRED EARL	$15,241.10
SHELTON JUDGE R	$16,705.87
SIDDALL FRANK M	$16,381.82
SILVAS ROBERTO	$16,650.80
SOLIZ PETE	$16,814.17
SOTO CHRISTOPHER JAMES	$13,617.99
SPEAR DOUGLAS BRYAN	$15,949.73
SUAREZ JR RICHARD	*$5,621.16
TAGLE FELIX S	$14,791.56
TANGUMA ALEJANDRO G	$15,612.92
TEAGLE VERNON NORBERT	$16,135.28
THOMAS JR LUCIUS	$11,430.37
TILLEY LILANN W	$13,594.75
TIPTON LARRY W	$16,048.45
TORRES DAVID J	$11,879.80
TORRES JOSE	$15,660.58

Defendant Intervenor:

TORRES JR EUGENE G	$9,997.81
TREJO RUBEN ESPARZA	$16,262.45
TREVINO EMILY S	$16,487.04
TREVINO GABRIEL S	$13,961.52
TREVINO JOE RAYMOND	$15,292.73
TREVINO NICOLAS R	$15,847.99
TURNER WENDELL NORRIS	$14,638.29
VALDEZ JR EDMUNDO	$15,565.16
VARGAS JR PEDRO H	$15,126.32
VASQUEZ JOE ALCALA	$13,512.86
VASQUEZ TERESA	$15,175.50
VEGA JUAN R	$16,833.34
VELA BETTY JO	$15,751.16
VELA JR FIDEL	$17,462.00
VELASQUEZ JR ELPIDIO	$15,071.10
VERASTIQUI RENE	$13,844.43
VERASTIQUI RICARDO MARIO	$15,185.27
VIDAL AMANDO	$16,609.30
VILLARREAL ARTURO	$16,144.46
VILLARREAL JR LEOBARDO	$14,364.03
VILLARREAL RUBEN J	$8,215.07
WALTON JON SCOTT	$15,266.49
WEATHERSBY JESSE R	$14,870.64
WEEKS KENNETH A	$16,188.70
WEST GERMAN L	$13,999.70
WILLIAMS ED	$17,948.16
WILLIAMS JAMES E	$8,010.45
WILLIAMS JR ISAAC V	*$5,260.40
YANDELL VERL	$15,458.91
YANEZ ALONZO	$15,469.85
ZARAGOZA LAZARO P	$15,619.13
ZARATE REYNALDO	$16,975.13

In addition, Plaintiff is awarded post judgment interest calculated at the rate of 10% per diem on the total amount of the judgment against Defendants, in the following specific amounts:

Defendant Intervenor:	Post Judgment Interest per diem until paid:
ADAMS GARY LEE	$4.74
ALFARO EVARISTO B	$2.83
ALLRED RONNY GLEN	$2.15
ALMAGUER FELIX C	$3.98
ALVARADO VERONICA RAMIREZ	$4.64
AMADOR MIGUEL V	*$1.41
ANAYA REYNALDO M	$3.75
ANDERSON PHIL ALAN	$4.95
ANDREWS BRUCE STACY	$3.55
ARMENDARIZ GUILLERMO F	$3.60
ARREOLA RUBEN	$4.35
AYALA ALEJANDRO a/k/a AYALA ALEXANDER F.	$2.37
AYCOCK RONALD JAMES	$3.70
BARRAZA JR MARGARITO	$4.30
BENAVIDEZ HIPOLITO L	$4.35
BIRMINGHAM LLOYD L	$3.59
BRANDON JOHN ANTHONY	$3.93
BULCEN JOSE G	$3.87
BURDETT FRANCIS C	$4.36
CABALLERO RONALD	$3.91
CAMPOS RAMIRO F	$4.46
CANALES ARNOLDO M	$4.64
CANO EUSEBIO	$4.65
CANTU JOHNNY J	$2.32
CANTU JR IGNACIO	$3.96
CANTU ROBERT M	$1.17
CARPENTER JOHN T	$4.73
CARREON EDELMIRA R	$3.58

Defendant Intervenor:	Post Judgment Interest per diem until paid:
CARTER CHARLES G	$4.87
CASAS PERFECTO NOE	$4.16
CASTILLO LUIS CHAPA	$4.06
CAVAZOS JR SABAS	$4.19
CAVAZOS VALDEMAR	$4.01
CERDA GILBERT M	$2.17
CERVERA JR ALFRED H	$2.18
COLLIER JR A J	$3.85
CORDOVA CRUZ G	$3.52
CORDOVA MARGARET	33⅓% of Defendant Intervenor's Award recovery
CORRAL KAY L	$4.48
CRAIG FLORENCE N	$3.96
DAILEY TOM M	$4.46
DAVILA DONALDO	$2.48
DAVILA GIBLERT	$4.74
DELAGARZA JR FELIBERTO	$4.65
DELAGARZA RICARDO V	$3.90
DELAROSA AGUSTIN	$4.58
DELEON JESUS M	$4.43
DELOSSANTOS ARNOLD	$3.92
DELOSSANTOS OSCAR	$1.41
DELOSSANTOS VALENTIN	$4.02
DIAZ BERNARDO	$3.97
DIMAS ALFRED THOMAS	$4.21
DUNNE OSCAR P	$3.81
ECHOLES JR HOMER D	*$1.37
ELIZARDO ABEL B	$4.25
ELIZONDO ALBERT	$3.98
ELIZONDO ALFREDO	$4.28
ELLINGER BARBARA K	$2.44
EPPERSON JOHN B	$4.77

Defendant Intervenor:	Post Judgment Interest per diem until paid:
ESPINOZA DAVID	$4.21
ESTRADA ELADO a/k/a ESTRADA HELADIO	$3.51
FIGIROVA PEDRO M	$4.30
FLEMING CHARLES T	$3.87
FLORES ALBERT	$4.56
FONSECA JOSE RICARDO	$4.72
FUENTES RUBEN	$4.40
GALLARDO HECTOR	*$1.56
GAMEZ MANUEL	$4.02
GARCIA ABEL	$4.58
GARCIA ALFREDO	$4.38
GARCIA DANIEL ROBERTO	$4.40
GARCIA EVARISTO	$1.14
GARCIA JR ANDRES	$4.52
GARCIA LAURIANO B	$4.35
GARCIA VICTOR	$4.76
GARZA ABELARDO	$3.92
GARZA ARMANDO M	$3.59
GARZA CARLOS G	$4.17
GARZA JR ALFREDO B	$4.11
GARZA NOE	$4.51
GARZA RAUL B	$4.34
GARZA RUDY	$4.63
GOMEZ GUSTAVO	$2.62
GOMEZ ROBERT F	$2.24
GONZALES JR CANDELARIO	$4.68
GONZALES RAMIJIO	$1.51
GONZALEZ DAVID	$3.87
GONZALEZ III MANUEL	$4.46
GONZALEZ JAVIER	$4.13
GONZALEZ RUBEN	$4.61
GRAVES JR RUFUS	$4.26

Defendant Intervenor:	Post Judgment Interest per diem until paid:
GRIGSBY JR HARRY L	$4.10
GUERRA BALDEMAR	$4.03
GUERRA JR EDUARDO G	$3.92
GUERRERO JR PEDRO	$3.00
GUTIERREZ PATRICIA	$3.99
GUTIERREZ RODOLFO	$3.86
GUZMAN ERNEST	$1.34
GUZMAN JR FRANCISCO	$4.46
HADDOCK PHILLIP E	$3.92
HALL GLORIA HERNANDEZ	$4.05
HARRIS JAMES R	$3.75
HERNANDEZ EDWARD	$4.05
HERNANDEZ MARCUS	$2.17
HINOJOSA ISMAEL D	$4.03
HUTCHISON LESLIE A	$2.34
JOHNSON MANUEL D	$4.18
KLEIN FREDRIC B	*$0.95
KRAUSE PAUL C	$3.55
KRAUSE ROGER HARRY	$4.22
LANDA JOE LUIS	$4.29
LARRIVEE GERALD R	$4.02
LEE JOE RICHARD	$4.31
LERMA RAOUL ARNOLD	$4.26
LONG PATRICIA A	$3.95
LONGORIA JR MATIAS	$4.36
LOPEZ DANNY	$4.32
LOPEZ JOSE F	$4.47
LOPEZ JR FRANCISCO	$4.16
LOPEZ JR GENARO	$1.44
LOPEZ RICARDO	$4.46
LOPEZ ROEL A	$4.70
LOPEZ RUBEN M	$4.01
LOZANO JUSTO	$4.31

Defendant Intervenor:	Post Judgment Interest per diem until paid:
MALDONADO JUAN A	$3.51
MANUEL JOYCE L	$3.72
MAR SANTIAGO	$3.92
MARINES ROJAS ELSA	$4.09
MARSHALL MARVIN F	$3.79
MARTINEZ ARISTEO B	$4.20
MARTINEZ ELISEO G	*$1.46
MARTINEZ JR GERONIMO	*$1.55
MARTINEZ JR JOSE M	$4.41
MARTINEZ NICOLAS NMN	$4.34
MARTINEZ OVIDIO V	$5.03
MARTINEZ RENE	$4.57
MARTINEZ ROEL R	$4.30
MARTINEZ ROLANDO H	$4.54
MARTINEZ SANTOS	$2.56
MARTINEZ THELMA M	$1.26
MAYES MARCIA L	$3.52
MCGEE THOMAS EDWARD	$4.21
MEDRANO ESTANISLADO	$4,35
MENDOZA VICTOR	$3.74
MOLINA HECTOR	$3.89
MONTGOMERY ROBERT SCOTT	$3.99
MORALES EDWARD MARIO	$4.52
MORENO JR ROGELIO	$3.79
MORIN JR JUAN O	$4.30
NARANJO GRACE M	$4.03
NELSON DONALD M	$4.01
NELSON JR ROBERT J	$4.35
NETEK ANTHONY V	*$1.48
NOYOLA ALEJANDRO S	$4.80
OBRIEN ERVIN W	$2.79
OROPEZ III JUAN	$4.78
ORTIZ ARMANDO A	$4.11

Defendant Intervenor:	Post Judgment Interest per diem until paid:
PAEZ NOE M	$3.55
PARSONS JERRY WAYNE	$3.93
PENA CARLOS	*$1.61
PENA CARLOS M	$4.22
PENA FLORENTINO B	$3.82
PENA MANUEL P	$4.01
PERALEZ JESSE	$4.36
PEREZ CARLOS	$4.82
PEREZ JR HELIO	$4.56
PEREZ MANUEL	$1.59
PEREZ MARGARET I	$3.30
PEREZ RAMIRO	$4.54
PERKINS LENORE F	$3.42
PERKINS ROBERT WILLIAM	$3.70
PHILLIPS JR FLENOY R	$4.12
PRYOR NOLAN E	$4.55
QUINTANILLA JESUS F	$3.59
RAMIREZ JR FELIPE	$3.90
RAMIREZ JR PEDRO	$4.35
RAMIREZ RAUL ROLDAN	$4.20
RAMIREZ ROBERT DAVID	$4.67
RAMIREZ ROBERTO NMN	$4.30
RAMON RUBEN A	$3.95
RAMOS RAMON T	$3.81
RAMOS VICTOR H	*$1.24
RAMSEY LYNDA K	*$1.21
REYES RAUL	$4.55
REYNA JR EULALIO	$3.75
RICE ALAN B	$4.59
RIGGINS MICHAEL ALAN	*$1.49
RINCON RICARDO	*$1.65
RITTGERS ERIC R	$4.23
RODRIGUEZ ABEL G	$4.26

Defendant Intervenor:	Post Judgment Interest per diem until paid:
RODRIGUEZ ANTONIO	$4.38
RODRIGUEZ JR ROBERT R	$3.63
RODRIGUEZ RICARDO	$4.31
RODRIGUEZ ROBERT	$4.11
RODRIGUEZ ROBERTO	$4,13
RUIZ TRINIDAD	$3.86
SAENZ JOSE ROBERTO	$4.10
SALDANA SANTOS V	$4.02
SALINAS ANNA M	$4.36
SALINAS JOSE R	$3.99
SANCHEZ ERNEST H	$4.01
SANTOS ROGELIO	$4.15
SEAY C ANNETTE	$3.13
SERNA SAMUEL	$4.36
SHELTON ALFRED EARL	$4.18
SHELTON JUDGE R	$4.58
SIDDALL FRANK M	$4.49
SILVAS ROBERTO	$4.56
SOLIZ PETE	$4.61
SOTO CHRISTOPHER JAMES	$3.73
SPEAR DOUGLAS BRYAN	$4.37
SUAREZ JR RICHARD	*$1.54
TAGLE FELIX S	$4.05
TANGUMA ALEJANDRO G	$4.28
TEAGLE VERNON NORBERT	$4.42
THOMAS JR LUCIUS	$3.13
TILLEY LILANN W	$3.72
TIPTON LARRY W	$4.40
TORRES DAVID J	$3.25
TORRES JOSE	$4.29
TORRES JR EUGENE G	$2.74
TREJO RUBEN ESPARZA	$4.46
TREVINO EMILY S	$4.52

Defendant Intervenor:	Post Judgment Interest per diem until paid:
TREVINO GABRIEL S	$3.83
TREVINO JOE RAYMOND	$4.19
TREVINO NICOLAS R	$4.34
TURNER WENDELL NORRIS	$4.01
VALDEZ JR EDMUNDO	$4.26
VARGAS JR PEDRO H	$4.14
VASQUEZ JOE ALCALA	$3.70
VASQUEZ TERESA	$4.16
VEGA JUAN R	$4.61
VELA BETTY JO	$4.32
VELA JR FIDEL	$4.78
VELASQUEZ JR ELPIDIO	$4.13
VERASTIQUI RENE	$3.79
VERASTIQUI RICARDO MARIO	$4.16
VIDAL AMANDO	$4.55
VILLARREAL ARTURO	$4.42
VILLARREAL JR LEOBARDO	$3.94
VILLARREAL RUBEN J	$2.25
WALTON JON SCOTT	$4.18
WEATHERSBY JESSE R	$4.07
WEEKS KENNETH A	$4.44
WEST GERMAN L	$3.84
WILLIAMS ED	$4.92
WILLIAMS JAMES E	$2.19
WILLIAMS JR ISAAC V	*$1.44
YANDELL VERL	$4.24
YANEZ ALONZO	$4.24
ZARAGOZA LAZARO P	$1.28
ZARATE REYNALDO	$4.65

IT IS FURTHER ORDERED that Defendant Intervenors GARY LEE ADAMS, EVARISTO B. ALFARO, RONNY GLEN ALLRED, FELIX C. ALMAGUER, VERONICA RAMIREZ ALVARADO, REYNALDO M ANAYA,

PHIL ALAN ANDERSON, BRUCE STACY ANDREWS, GUILLERMO F. ARMENDARIZ, RUBEN ARREOLA, ALEJANDRO AYALA, RONALD JAMES AYCOCK, MARGARITO BARRAZA JR, HIPOLITO L BENAVIDEZ, LLOYD L. BIRMINGHAM, BRANDON JOHN ANTHONY, JOSE G. BULCEN, BURDETT FRANCIS C, RONALD CABALLERO, RAMIRO F. CAMPOS, ARNOLDO M. CANALES, EUSEBIO CANO, JOHNNY J. CANTU, IGNACIO CANTU JR, ROBERT M. CANTU, JOHN T. CARPENTER, EDELMIRA R. CARREON, CHARLES G. CARTER, NOE CASAS PERFECTO, LUIS CHAPA CASTILLO, SABAS CAVAZOS JR, VALDEMAR CAVAZOS, GILBERT M. CERDA, ALFRED H. CERVERA JR, A.J. COLLIER JR, CRUZ G. CORDOVA, MARGARET CORDOVA, KAY L. CORRAL, FLORENCE N. CRAIG, TOM M. DAILEY, DONALDO DAVILA, GILBERT DAVILA, FELIBERTO DELAGARZA JR, RICARDO V. DELAGARZA, AGUSTIN DELAROSA, JESUS M. DELEON, ARNOLD DELOSSANTOS, VALENTIN DELOSSANTOS, BERNARDO DIAZ, ALFRED THOMAS DIMAS, OSCAR P. DUNNE, ABEL B. ELIZARDO, ALBERT ELIZONDO, ALFREDO ELIZONDO, BARBARA K. ELLINGER, JOHN B. EPPERSON, DAVID ESPINOZA, ELADO ESTRADA. PEDRO M. FIGIROVA, CHARLES T. FLEMING, ALBERT FLORES, JOSE RICARDO FONSECA, RUBEN FUENTES, MANUEL GAMEZ, ABEL GARCIA, ALFREDO GARCIA, ROBERTO DANIEL GARCIA, EVARISTO GARCIA, ANDRES GARCIA JR, LAURIANO B. GARCIA, VICTOR GARCIA, ABELARDO GARZA, ARMANDO M. GARZA, CARLOS G. GARZA, ALFREDO B. GARZA JR, NOE GARZA, RAUL B. GARZA, RUDY GARZA, GUSTAVO GOMEZ, ROBERT F. GOMEZ, CANDELARIO GONZALES JR, RAMIJIO GONZALES, DAVID GONZALEZ, MANUEL GONZALEZ III, JAVIER

GONZALEZ, RUBEN GONZALEZ, RUFUS GRAVES JR, HARRY L. GRIGSBY JR. BALDEMAR GUERRA, EDUARDO G. GUERRA JR, PEDRO GUERRERO JR, PATRICIA GUTIERREZ, RODOLFO GUTIERREZ, ERNEST GUZMAN, FRANCISCO GUZMAN JR, PHILLIP E. HADDOCK, GLORIA HERNANDEZ HALL, JAMES R. HARRIS, EDWARD HERNANDEZ, MARCUS HERNANDEZ, ISMAEL U. HINOJOSA, LESLIE A. HUTCHISON, MANUEL D. JOHNSON, PAUL C. KRAUSE, ROGER HARRY KRAUSE, JOE LUIS LANDA, GERALD R. LARRIVEE, JOE RICHARD LEE, ARNOLD LERMA RAOUL, PATRICIA A. LONG, MATIAS LONGORIA JR, DANNY LOPEZ. JOSE F. LOPEZ, FRANCISCO LOPEZ JR, GENARO LOPEZ JR, RICARDO LOPEZ, ROEL A. LOPEZ, RUBEN M. LOPEZ, JUSTO LOZANO, JUAN A. MALDONADO, JOYCE L. MANUEL, SANTIAGO MAR, ELSA MARINES ROJAS, MARVEN F. MARSHALL, ARISTEO B. MARTINEZ, JOSE M. MARTINEZ JR, NICOLAS NMN MARTINEZ, OVIDIO V MARTINEZ, RENE MARTINEZ, ROEL R MARTINEZ, ROLANDO H MARTINEZ, SANTOS MARTINEZ, THELMA M MARTINEZ. MARCIA L MAYES, THOMAS EDWARD MCGEE, ESTANISLADO MEDRANO, VICTOR MENDOZA, HECTOR MOLINA, ROBERT SCOTT MONTGOMERY, EDWARD MARIO MORALES, ROGELIO MORENO JR, JUAN O MORIN JR, GRACE M NARANJO, DONAL M. NELSON. ROBERT J. NELSON JR. ALEJANDRO S. NOYOLA, ERVIN W. OBRIEN, JUAN OROPEZ III, ARMANDO A. ORTIZ. NOE M. PAEZ, JERRY WAYNE PARSONS, FLORENTINO B. PENA, MANUEL P. PENA, JESSE PERALEZ, CARLOS PEREZ, HELIO PEREZ JR, MANUEL PEREZ, MARGARET I. PEREZ, RAMIRO PEREZ, LENORE F. PERKINS, ROBERT WILLIAM PERKINS, FLENOY R.

PHILLIPS JR, NOLAN E. PRYOR, JESUS F. QUINTANILLA. FELIPE RAMIREZ JR, PEDRO RAMIREZ JR, RAUL ROLDAN RAMIREZ, ROBERT DAVID RAMIREZ, ROBERTO NMN RAMIREZ, RUBEN A RAMON, RAMON T RAMOS, RAMON T RAMOS, RAUL REYES, EULALIO REYNA JR, ALAN B RICE, ERIC R RITTGERS, ABEL G RODRIGUEZ, ANTONIO RODRIGUEZ, ROBERT R RODRIGUEZ JR, RICARDO RODRIGUEZ, ROBERT RODRIGUEZ, ROBERTO RODRIGUEZ, TRINIDAD RUIZ, JOSE ROBERTO SAENZ, SANTOS V SALDANA, ANNA M SALINAS, JOSE R SALINAS, ERNEST H SANCHEZ, ROGELIO SANTOS, C ANNETTE SEAY, SAMUEL SERNA, ALFRED EARL SHELTON, JUDGE R SHELTON, FRANK M SIDDALL, ROBERTO SILVAS, PETE SOLIZ, CHRISTOPHER JAMES SOTO, DOUGLAS BRYAN SPEAR, FELIX S TAGLE, ALEJANDRO G TANGUMA, VERNON NORBERT TEAGLE, LUCIUS THOMAS JR, LILANN W TILLEY, LARRY W TIPTON, DAVID J TORRES, JOSE TORRES, EUGENE G TORRES JR, RUBEN ESPARZA TREJO, EMILY S TREVINO, GABRIEL S TREVINO, JOE RAYMOND TREVINO, NICOLAS R TREVINO, WENDELL NORRIS TURNER, EDMUNDO VALDEZ JR, PEDRO H VARGAS JR, JOE ALCALA VASQUEZ, TERESA VASQUEZ, JUAN R VEGA, BETTY JO VELA, FIDEL VELA JR, ELPIDIO VELASQUEZ JR, RENE VERASTIQUI, RICARDO MARIO VERASTIQUI, AMANDO VIDAL, ARTURO VILLARREAL, LEOBARDO VILLARREAL JR, RUBEN J VILLARREAL, JON SCOTT WALTON, JESSE R WEATHERSBY, KENNETH A WEEKS, GERMAN L WEST, ED WILLIAMS, JAMES E WILLIAMS, VERL YANDELL, ALONZO YANEZ, LAZARO P ZARAGOZA, REYNALDO ZARATE, be, and hereby are, commanded forthwith to desist and

refrain from the following acts and conduct, and are otherwise permanently enjoined, from:

(a) failing or refusing to pay the 33-1/3% of their Award monies into the registry of the Court to the extent that Defendants have possession or control of, or access to, said monies:

(b) disposing of, spending, or diverting 33-1/3% of their Award monies; and/or

(c) accepting, holding, or otherwise receiving their Award monies without paying Gray & Becker the 33-1/3% owed to Gray & Becker as contractual attorney's fees.

To the extent necessary, and as to Defendant Intervenors only, this final judgment supercedes that certain judgment entered November 20, 2001, in Cause No. GN 101682 styled *Gray & Becker v. Sheldon, et al* (subsequently severed as to Defendant Intervenors and styled *Gray & Becker v. Adams, et al Defendant Intervenors,* Cause No. GN 104188), and the November 20, 2001 judgment in Cause No. GN1-01682 is hereby modified as to Defendant Intervenors only. It is the intention and order of this Court that this Final Judgment against Defendant Intervenors is entered in modification and in place of the judgment in Cause No. GN 101682 as to Defendant Intervenors only. Defendant Intervenors have intervened and appeared in their individual capacities in this suit, and this Final Judgment, therefore, renders Defendant Intervenors' challenges as to certification of the classes, adequacy of notice, etc. (originally asserted by Defendant Intervenors in Cause No. GN1-01682 styled *Gray & Becker v. Sheldon, et al.,* but subsequently severed and maintained in this cause) MOOT as to Defendant Intervenors.

It is further ORDERED that Defendant Intervenors shall take nothing as to any and all claims or causes of action which Defendant Intervenors have raised or which Defendant Intervenors could have raised or asserted against Gray & Becker in conjunction with: (a) Gray & Becker's representation of the Unions or the prosecution of the employees' claims in the underlying arbitration; (b) Gray & Becker's actions or omissions in connection with enforcement and collection of the contractual attorney's fees owed to Gray & Becker; or (c) any other matter which Defendant Intervenors have raised or could have raised against Gray & Becker associated, directly or indirectly, with the facts and circumstances of the allegations of Gray & Becker and/or Defendant Intervenors.

IT IS FURTHER ORDERED that Plaintiff shall have all writs and processes issued as may be necessary in the enforcement an collection of this judgment.

SIGNED and ENTERED this 18th day of March 2002.

PAUL DAVIS
JUDGE PRESIDING

IN THE DISTRICT COURT OF
TRAVIS COUNTY, TEXAS
200TH JUDICIAL DISTRICT

Cause No. GN 101682

GRAY & BECKER, P.C.,

Plaintiff,

—v.—

SHELDON, ET AL.

Defendants.

FINAL JUDGMENT

On the 20th day of November, 2001, came on to be heard the above-entitled and numbered cause and GRAY & BECKER, P.C., Plaintiff, Counter-Defendant, and Intervenor Defendant, appearing in person or by attorney of record, and GEORGE S. SHELDON, ARMANDO M. GARZA, BENJAMIN W. WILSON, ILDEFONSO B. DE LA GARZA, RICARDO DE LA GARZA, HENRY MARTINEZ, JR., LUIS HERRERA, ERNEST E. ARIZPE, EDWARD ESCOBAR, JR., SOSTEN R. MONTANO, STEVE A. SOTO, ANDREW GARCIA, JR., CELESTINO CERVANTES, JR., and BOBBY T. DELUNA, appearing in person or by attorney of record,

individually and on behalf of ALL CURRENT AND FORMER WAGE GRADE EMPLOYEES OF THE CORPUS CHRISTI ARMY DEPOT WHO ARE CLAIMANTS AND BENEFICIARIES OF THE ARBITRATION AWARD IN FLRA CASE 0-AR 3309 ("CLASS I CLAIMANTS"), Defendants and Counter-Plaintiffs, and ANTONIO O. SOLIZ, appearing by attorney of record, individually and on behalf of ALL CURRENT AND FORMER WAGE GRADE EMPLOYEES OF THE CORPUS CHRISTI ARMY DEPOT WHO ARE CLAIMANTS AND BENEFICIARIES OF THE ARBITRATION AWARD IN FLRA CASE 0-AR 3309 WHO EXECUTED AN "AGREEMENT FOR COMPROMISE AND PAYMENT OF CONTRACTUAL ATTORNEY'S FEES" WITH GRAY & BECKER, P.C., ("CLASS II CLAIMANTS"), Intervenor Plaintiffs, having announced that they had reached a settlement of the above-styled cause, and announced ready for the fairness hearing previously scheduled by this Court.

After reviewing the pleadings, evidence, and argument of counsel, the Court is of the opinion that the following should be ordered and should constitute the FINAL JUDGMENT of this Court.

THE COURT FINDS that the CLASS I CLAIMANTS and the CLASS II CLAIMANTS are identified in Exhibit "A," attached hereto and incorporated herein.

THE COURT FURTHER FINDS that the person listed in the attached Exhibit "B," are excluded from that class defined as CLASS I CLAIMANTS as a result of requesting exclusion in conformity with the notice of class action. Such persons are therefore excluded from the effects of this Judgment.

THE COURT FURTHER FINDS that the persons listed in the attached Exhibit "C," are excluded from that

class defined as CLASS II CLAIMANTS as a result of requesting exclusion in conformity with the notice of class action. Such persons are therefore excluded from the effects of this Judgment.

THE COURT FURTHER FINDS that the settlement agreement between GRAY & BECKER, P.C., and the CLASS I CLAIMANTS and the CLASS II CLAIMANTS, the terms of which are attached hereto as Exhibit "D," is reasonable and fair.

THE COURT FURTHER FINDS that, excepting those excluded persons identified in Exhibit "A," and "B," all other members of CLASS I CLAIMANTS and CLASS II CLAIMANTS were duly given notice of the pendency of this class action and the proposed terms of the settlement and this fairness hearing by the best means practicable under the circumstances pursuant to the Texas Rules of Civil Procedure 42(c)(2): (a) through direct mailing to all class members based on the Department of the Army's address list for current and former CCAD employees; (b) through notice published in the Corpus Christi Caller Times on November 14, 2001, explaining the proposed settlement terms and that class members would be and are bound by the terms and burdens of the settlement agreement, said terms of which are incorporated herein as the JUDGMENT of this Court; and (c) through Union notices and two open meetings held 11/15/01 at the Corpus Christi Army Depot during which class counsel met with and explained the terms of the proposed settlement to all attendees.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that CLASS I CLAIMANTS and CLASS II CLAIMANTS be given notice of this FINAL JUDGMENT and of the settlement and its terms by first class mail based on the address information provided by the

Department of the Army and by publication in the Corpus Christi Caller Times within five (5) business days of this judgment. Said notice is to be prepared by HARRIS & GREENWELL, L.L.P., approved by this Court, and delivered by GRAY & BECKER, P.C., at its sole expense.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED each member of the CLASS I CLAIMANTS and each member of the CLASS II CLAIMANTS is liable to and obligated to pay, and is hereby ORDERED to pay, contractual attorney's fees to GRAY & BECKER, P.C. in the amount representing 25% of each such claimant's gross recovery under the arbitration award (the "Award") as modified and affirmed by the FLRA in FLRA Case No. 0-AR 3309 ("EDP Recovery"). Upon payment of such 25% of such claimant's gross recovery (including all future recoveries, if any) under the Award, whether through garnishment proceedings or direct payment, such claimant has fully satisfied any and all claims, if any, that GRAY & BECKER and GILLESPIE, ROZEN & WATSKY may have against him or her for contractual attorney's fees.

THE COURT FURTHER FINDS that the CLASS I CLAIMANTS and CLASS II CLAIMANTS waive any and all statutory or constitutional rights, if any, to claim that that portion of the EDP Recovery due GRAY & BECKER under this JUDGMENT constitutes "current wages" under Texas law or are subject to restrictions under federal law to the garnishment of earnings. These amounts are, therefore, subject to garnishment. The CLASS I and II CLAIMANTS also waive their rights, if any, under federal or state law to notice of the garnishment or the opportunity to contest or dispute the validity of the garnishment provided herein. All Claimants

also consent to use and disclosure of their social security numbers for purpose of enforcing this Judgment.

THE COURT FURTHER FINDS that GRAY & BECKER and CLASS I CLAIMANTS and CLASS II CLAIMANTS have waived any rights to file post-judgment motions which may affect the finality of this JUDGMENT such as motions for rehearing, reconsideration, or motions for new trial and have waived rights to appeal this JUDGMENT. Accordingly, this JUDGMENT is considered final for the purposes of any garnishment action effective the date of this JUDGMENT.

THE COURT FURTHER FINDS THAT in the event that the Department of the Army or the Department of Defense does not honor the garnishment actions provided herein, or Gray & Becker is unable to collect the monies payable to Gray & Becker herein through the garnishment procedure for any other reason, Harris & Greenwell and each member of the employee classes agree that the employees shall and are hereby ORDERED to pay 25% of the gross recovery under the Award to Gray & Becker, 900 West Avenue, Austin, Texas 78701, or the law firm of Canales & Simonson, 2601 Morgan Avenue, Corpus Christi, Texas as agent for Gray & Becker, within ten (10) calendar days of the employees' receipt of the employees' Award monies. In the event that Gray & Becker is not paid or does not collect the monies payable to it as provided herein, Gray & Becker shall collect, and the non-paying employees shall be obligated to pay and are ORDERED to pay to Gray & Becker, 33-1/3% of the employees' recovery under the Award plus reasonable and necessary attorney's fees incurred from that date in the prosecution and collection thereof. Non-paying employees will also be subject to and bound by the releases of all employee claims against

Gray & Becker, Gillespie, Rozen & Watsky, and the Unions as provided herein.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that HARRIS & GREENWELL, L.L.P. shall receive reasonable and necessary class counsel attorney's fees in an amount to be determined by the Court and not to exceed Five Hundred Thousand and No/100s Dollars ($500,000.00), and that said amount shall be payable to HARRIS & GREENWELL, L.L.P., from GRAY & BECKER, P.C.; provided, however, that such amount is conditioned upon GRAY & BECKER collecting at least 90% of the total monies payable to GRAY & BECKER under the terms of the settlement agreement and this JUDGMENT or other arrangement with GRAY & BECKER.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that all other expenses associated with administration of the class other than expenses associated with notice shall generally be borne by class counsel.

THIS JUDGMENT does not affect GRAY & BECKER or GILLESPIE, ROZEN & WATSKY's rights to payment of statutory attorney's fees from the Department of the Army which all parties agree are separate from and independent of the attorney's fees obligation under this Judgment.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Gray & Becker shall have such writs and processes in the enforcement and collection of this JUDGMENT as follows; Gray & Becker shall first to attempt garnishment against the Department of the Army under the terms of the settlement, and, if unsuccessful, is to provide written notice to the CLASS I

CLAIMANTS and CLASS II CLAIMANTS at the date of disbursement of said funds to the claimants of their obligation to pay 25% of the gross amount of EDP Recovery to Gray & Becker within ten days of the any members' receipt of such proceeds. Said notice is to state in dollars and cents the 25% of the EDP Recovery, provide the date certain when such check is to be post-marked, and such other instructions as may be required with respect to payment. In the event both garnishment and payment by mail are unsuccessful, Gray & Becker shall have all such writs, execution and processes as may be necessary in the enforcement of this JUDGMENT against any CLASS I CLAIMANT or CLASS II CLAIMANT that has not satisfied his or her obligation under the settlement and this JUDGMENT.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Counter Plaintiffs and Intervenor Plaintiffs TAKE NOTHING as to their claims and causes of action, if any, against Gray & Becker, P.C. and Gillespie, Rozen & Watsky, P.C.

All costs of court to be borne by the party incurring same.

All other relief not granted herein is expressly denied.

Dated this 20th day of November, 2001.

John K. Dietz

Judge John K. Dietz

IN THE DISTRICT COURT OF
TRAVIS COUNTY, TEXAS
200TH JUDICIAL DISTRICT

Cause No. GN 101682

GRAY & BECKER, P.C.,

Plaintiff,

—v.—

JOE A. GONZALES, GEORGE S. SHELDON, ARMANDO M. GARZA, BENJAMIN W. WILSON, ILDEFONSO B. DE LA GARZA, RICARDO DE LA GARZA, HENRY MARTINEZ, JR., LUIS HERRERA, ERNEST E. ARIZPE, EDWARD ESCOBAR, JR., SOSTEN R. MONTANO, STEVE A. SOTO, ANDRES GARCIA, JR., CELESTINO CERVANTES, JR., BOBBY T. DELUNA, ET AL.,

Defendants.

AGREEMENT FOR CLASS ACTION RESOLUTION AND SETTLEMENT (SUBJECT TO COURT APPROVAL)

Gray & Becker and Harris & Greenwell, for the reasons and according to the terms hereinafter delineated, and subject at all times to Court approval, hereby agree as follows:

WHEREAS, Gray & Becker has represented and continues to represent the AFGE Local 2142, NFFE Local 797, and IAMAW Lodge 2049 Unions (the "Unions"), as the exclusive representative of the CCAD employees covered under the arbitration award (the "Award") in FMCS No. 98-09877 (the "Asbestos Arbitration") and Gray & Becker as a party in the various suits referenced herein. The background and relevant facts associated with Gray & Becker's representation of the Unions and Gray & Becker's prosecution of the employees' claims in conjunction with the Asbestos Arbitration are detailed in attachment A hereto which is incorporated herein for all purposes. Gray & Becker alleges that, and has filed claims and suits asserting that, the CCAD employees eligible under the Award are obligated to pay contractual attorney's fees to Gray & Becker in the amount of 33-1/3% of each employee's gross recovery under the Award; alternatively, that employees who have executed that certain Agreement for Compromise & Payment of Contractual Attorney's Fees (the "27-1/2% Agreement") are obligated to pay contractual attorney's fees in the amount of 27-1/2% of the employees' gross recovery under the Award. Gray & Becker's claims against the employees under the Award for 33-1/3%, or alternatively 27-1/2%, are collectively referred to hereinafter as "Gray & Becker's Claims."

WHEREAS, Harris & Greenwell represents certain individual employees and class claimants who allege that, and have filed claims and suits asserting that, the employees eligible under the Award are not obligated to pay contractual attorney's fees to Gray & Becker in the amount of 33-1/3%, or in the amount of 27-1/2% in the case of employees who have signed the 27-1/2% Agreement. The claims of employees which Harris & Greenwell represent to the effect that the employees are not

obligated to pay contractual attorney's fees in the amount of 33-1/3% (or 27-1/2%), or that Gray & Becker and/or the Unions have acted improperly, unlawfully, or tortiously, are collectively referred to hereinafter as the "Class Claims."

WHEREAS, Gray & Becker and Harris & Greenwell agree that it is in the best interest of all parties involved to compromise and resolve all pending and potential claims between and among the parties including, but not limited to: (a) Gray & Becker's Claims; (b) Class Claims; and (c) the claims pending in Civil Action No. C-01-307, styled *Salgado v. Gray & Becker, et al.* pending in the United States District Court in the Southern District, Cause No. 01-5433-H, styled *Soliz v. Gray & Becker, P.C.* pending in the Nueces County District Court, Cause No. GN 101682, styled *Gray & Becker v. Gonzales, et al.* pending in the Travis County District Court and Cause No. GN 103429, styled *Gray & Becker v. Quintanilla* pending in the Travis County District Court (said claims, suits and cases are hereinafter collectively referred to as the "Pending Litigation"). Among other things, Gray & Becker acknowledges that the prospects of Gray & Becker prevailing as to the enforcement of Gray & Becker's Claims and as to the collection of the monies owed to Gray & Becker in the event Gray & Becker prevails are uncertain. Among other things, Harris & Greenwell acknowledges that the prospects of employees prevailing as to the Class Claims are uncertain and that the Travis County District Court in Cause No. GN 103429, styled *Gray & Becker v. Quintanilla* has already ruled adversely against Quintanilla as to Quintanilla's claims and defenses; in addition, the employees are also subject to liability and judgment for additional attorney's fees incurred by Gray & Becker in the prosecution of the enforcement and collection of

Gray & Becker's Claims and court costs in the event Gray & Becker prevails. All parties further agree that the pending litigation is disruptive, unsettling, distracting, and costly to all parties involved. All parties further agree that it is in the interest of all parties to have one court address and resolve the pending and potential claims between the parties instead of multiplitious litigation in multiple forms and venues.

In consideration of the foregoing, and in compromise of the Gray & Becker Claims and the Class Claims, as well as all other current or potential claims between the parties (including the Unions), and in full and final settlement of the Pending Litigation, Gray & Becker and Harris & Greenwell agree to the following terms for settlement and resolution the Pending Litigation and of all current and potential claims among the parties (including the Unions):

1. Gray & Becker and Harris & Greenwell will assert their respective claims on a class action basis in Cause No. 101682, styled *Gray & Becker v. Gonzales, et al.*, presently pending in the Travis County District Court. Gray & Becker will assert the Gray & Becker Claims against the employee classes as hereinafter defined and Harris & Greenwell will assert Class Claims as counterclaims or intervenor claims on behalf of the employee classes as hereinafter defined.

2. Gray & Becker and Harris & Greenwell will jointly seek and stipulate to the designation and certification of an employee class (the "Class") representing the employees against whom Gray & Becker asserts claims for contractual attorney's fees in the amount of 33-1/3% of the employees' recovery under the Award and the employees who have signed the 27-1/2% Agreement and against whom Gray & Becker asserts claims for con-

tractual attorney's fees in the amount of 27-1/2% of the employees' gross recovery under the Award. *(See* footnote 1 below).

3. Subject to Court preliminary approval of the Settlement Agreement according to the terms herein provided, Gray & Becker agrees that Harris & Greenwell shall be class counsel for the Class.

4. In compromise and settlement of the Gray & Becker Claims and the Class Claims, each employee member of the Class agrees to pay, and Gray & Becker agrees to accept, 25% of each employee's gross recovery under the Award as full and final settlement of said employees' contractual attorney's fees obligation to Gray & Becker.

5. Harris & Greenwell and each employee member of the Class agrees and stipulates that all claims of every kind and character which the employee has, may have, or could have against Gray & Becker, Gillespie, Rozen & Watsky, and the Unions shall be fully and finally released effective upon Court approval of this Settlement Agreement. Except to the extent of the class members' obligations to pay Gray & Becker as provided herein, Gray & Becker agrees and stipulates that the Gray & Becker claims against the Class members shall be fully and finally released effective upon Court approval of this Settlement Agreement.

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[1] This agreement and the terms herein are not intended to and shall not affect or modify Gray & Becker and Gillespie, Rozen & Watsky's right to payment of statutory attorney's fees from the Army. The parties agree that Gray & Becker and Gillespie, Rozen & Watsky's right to payment of statutory attorney's fees is separate from and independent of the contractual attorney's fees payable to Gray & Becker under this agreement or otherwise.

6.a. Harris & Greenwell, Gray & Becker, and each member of the employee Class, agree to the entry of a consent judgment (the "Consent Judgment") in favor of Gray & Becker according to the terms of this Settlement Agreement and providing that Gray & Becker shall have and recover from said employees 25% of each employee's gross recovery under the Award.

b. Harris & Greenwell, Gray & Becker, and each member of the Class agree that the Consent Judgment will be final upon final hearing of this Court with respect to fairness.

c. Harris & Greenwell, Gray & Becker, and the employee members of the Class agree to waive any and all rights to appeal and any other rights to file any motions for reconsideration, rehearing, or new trial with respect to the Consent Judgment.

7. Harris & Greenwell as counsel for and authorized representative of both classes, and each member of the classes, agree and stipulate that upon Court approval of this Settlement Agreement, Gray & Becker may seek and will be entitled to have writs of garnishment issued garnishing 25% of each employee's recovery under the Award. In conjunction with and as a material term of this Settlement Agreement, employees within the Class agree to waive any and all constitutional claims or defenses that the Award monies constitute "current wages" and are, therefore, exempt from garnishment under Texas law, but only to the extent of the amounts to be paid to Gray & Becker under this agreement and the consent judgment to be entered based upon this Settlement Agreement.

8. Harris & Greenwell, as class counsel and authorized representative of the employee classes, and each

member of the classes, agrees and stipulates that: (a) the provision herein providing for the issuance for writ of garnishment is a material term of this settlement and represents substantial consideration for Gray & Becker's agreement to the terms herein; and (b) neither Harris & Greenwell nor the employee members of the classes will oppose or challenge, now or at any time in the future, Gray & Becker's application for or execution of said writs of garnishment in conjunction with this settlement.

9. In the event that the Department of the Army or the Department of Defense does not honor the garnishment actions provided herein, or Gray & Becker is unable to collect the monies payable to Gray & Becker herein through the garnishment procedure for any other reason, Harris & Greenwell and each member of the employee classes agree that the employees shall pay 25% of the gross recovery under the Arbitration Award to Gray & Becker within ten (10) days of the employees' receipt of the employees' Award monies. In the event that Gray & Becker is not paid or does not collect the monies payable to Gray & Becker as provided herein, Gray & Becker shall have the right to prosecute collection against all non-paying employees in the amount of 33-1/3% of the employees' recovery under the Award plus reasonable and necessary attorney's fees incurred in the prosecution and collection thereof. Non-paying employees will, however, be subject to and bound by the releases of all employee claims against Gray & Becker, Gillespie, Rozen & Watsky, and the Unions as provided herein.

10. Harris & Greenwell will seek payment of class counsel attorney's fees in an amount to be determined by the Court as reasonable. Gray & Becker stipulates that in the event that: (a) the class is certified and this settlement is approved by the Court according to the terms

stated: and (b) the settlement is approved, or not object to, by employees representing greater than 90% of the total Award monies payable under the Award, $500,000.00 is a reasonable amount to be paid to Harris & Greenwell as class counsel attorney's fees based on: (a) Harris & Greenwell's development of the Harris & Greenwell Claims; and (b) Harris & Greenwell's negotiation of this Settlement Agreement; and (c) Harris & Greenwell's efforts in administering the Class. Notwithstanding anything herein to the contrary, however, the final amount of payment of class counsel fees to Harris & Greenwell will be subject to and conditioned on: (a) Court determination and approval of this Agreement; and (b) Gray & Becker collecting at least 90% of the total monies payable to Gray & Becker under the terms of this Settlement Agreement. In addition, Harris & Greenwell will not seek class counsel fees in excess of $500,000.00. Class counsel fees shall be borne by and paid out of Gray & Becker's recovery hereunder. Harris & Greenwell shall also release its current clients from obligations under their existing fee agreements with Harris & Greenwell.

11. Gray & Becker will provide, at its sole expense, notice (prepared by Harris & Greenwell) to all class members of the class certification, this class action settlement, and the fairness hearing. Gray & Becker will also provide, at its sole expense, final notice of the Court's approval of the class action settlement. All other expenses associated with administration of the class shall be borne by class counsel. Class counsel will be entitled to seek reimbursement for reasonable and necessary expenses as determined by the Court.

12. The parties' agreement to the terms herein is conditioned upon: (a) class certification and Court approval

of this Settlement Agreement by November 20, 2001; (b) approval by class members representing at least 90% of the total Award monies payable to employees under the Award; and (c) Gray & Becker's collection of at least 90% of the monies payable to Gray & Becker under the terms hereof.

13. It is the agreement and intention of all parties that this Settlement Agreement shall fully, finally, and conclusively resolve all claims by, between, or among Gray & Becker, Gillespie, Rozen & Watsky, the Unions, Harris & Greenwell and its clients, and the Class, all employees covered under the Award, including, but not limited to, the claims pending in the Pending Litigation.

14. The parties agree and stipulate that Harris & Greenwell's appearance and actions in conjunction with this Agreement and presentation of same to the Court for consideration and approval will not waive the rights of Defendants in this case to challenge venue, seek abatement, or removal to federal court. All appearance by Harris & Greenwell shall be subject to and without waiver of Harris & Greenwell's and Defendants' rights thereto.

Harris & Greenwell, P.C.
Andrew Greenwell/ by permission
[ILLEGIBLE] November 9, 2001

Gray & Becker, P.C.
[ILLEGIBLE] November 9, 2001

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

Civil No. C-01-307

JOHN J. SALGADO,

Plaintiff,

—VS.—

GRAY & BECKER, P.C., GILLESPIE, ROZEN & WATSKY, P.C., and BRIAN BISHOP,

Defendants.

ORDER OF DISMISSAL

This is a dispute over a contingent fee agreement that certain unions entered into with the defendant attorneys. For the reasons stated below, this action will be dismissed for lack of jurisdiction.

I. JURISDICTION

The Court concludes that it does not have subject matter jurisdiction over this dispute.

II. FACTS

Federal law and regulations allow "prevailing wage" civilians employed by federal agencies to earn so-called "environmental differential pay" (EDP). *See* 5 U.S.C.A. § 5343(c)(4); 5 CFR § 532.511. Employees who are exposed to a working condition or hazard that falls within certain categories approved by the Office of Personnel Management are entitled to EDP. 5 CFR § 532.511(a)(1). A dispute arose over whether civilian employees at the Corpus Christi Army Depot (CCAD) were entitled to EDP.

In late 1997 and early 1998, three locals of the American Federation of Government Employees (collectively, the "Unions"), representing CCAD employees entered into agreements with Gray & Becker, P.C. Under these agreements, Gray & Becker would represent the unions' members in connection with their grievances over EDP. The agreement provided that the "Clients" would pay the attorneys 33-1/3% of all sums recovered from the grievance process. The agreements defined the term "Clients" to include the union locals and all persons represented by the locals. *See* Defendants' First Amended Counterclaim and Third Party Complaint, and Intervenor's Original Petition in Intervention, Exhibits 1-A through 1-C. Gillespie, Rozen & Watsky, P.C. acted as co-counsel with Gray & Becker. Brian Bishop, another defendant, is a partner of Gray & Becker. Together, the two firms and Mr. Bishop are referred to as the "Attorneys."

The Attorneys represented the Unions and their members in seeking back EDP and other damages from the Department of the Army, who had employed the union members. The matter was submitted to arbitration in April and May of 1999.

The Attorneys' and the Unions' efforts were indisputably successful. On March 24, 2000, the arbitrator rendered his decision and awarded EDP to all of the Unions' wage grade employees from the date six years prior to the filing of the Unions' grievances, plus interest (there were three grievances, one for each union local, and they were not all filed at the same time, so the six-year period varies depending on the local). Although there is no final figure, the aggregate amount of EDP and interest is likely to exceed $75 million.

The arbitrator's award provided, "The contractual attorney's fees payable to the Unions' attorneys pursuant to the Unions' attorney's fees agreement are to be segregated and paid to the Unions' attorneys at the time of distribution and payment of the award." The Army appealed the award to the Federal Labor Relations Authority (FLRA), which issued its decision on January 31, 2001. *See U.S. Department of the Army, Corpus Christi Army Depot, Corpus Christi, Texas,* 56 FLRA 1057 (2001).

The FLRA upheld the award, but overturned the part of the decision that required the Army to segregate from each employee's allotment the attorney's fees portion of the award. The FLRA noted, first, that the head of the CCAD had no authority to approve or make deductions from employees' pay for the purpose of satisfying an obligation to pay attorney fees. Second, the FLRA determined that the Secretary of the Department of Defense or the Secretary of the Department of the Army has discretion to make the deductions, but they are not obligated to do so. The FLRA then directed the head of CCAD to request the appropriate Secretary to determine whether a deduction should be made. The Secretary of Defense decided not to make the deduction.

The Secretary's ruling means that the Attorneys will have to enforce their claim to 1/3 of the EDP individually against each person to whom an EDP check will be mailed. Unless the EDP recipients cooperate, the Attorneys may be faced with the prospect of filing suit against thousands of individuals to recover their fees.

Not only are the Attorneys faced with the difficult task of recovering their fees, but they also have competition for those fees. Plaintiff is an employee of the United States Department of the Army at the CCAD. After the Attorneys successfully prosecuted the arbitration, plaintiff contracted with another attorney, Andrew Greenwell, to challenge the Attorneys' claim for fees. Mr. Greenwell agreed to represent plaintiff and any other current or former CCAD employees for a share of their EDP recovery. If Mr. Greenwell is ultimately successful, those employees who sign on with him will pay 1/5 of their EDP recovery to Mr. Greenwell (who played no part in recovering the EDP), rather than 1/3 to the Attorneys (whose efforts led to the EDP award). Several individuals have signed on with Mr. Greenwell and have attempted to intervene as parties plaintiff.

Plaintiff sued the Attorneys in state court, alleging numerous causes of action, basically challenging his personal liability for a portion of the attorney fees and seeking damages against the Attorneys for tortious conduct. The Attorneys removed the suit, joined the Unions as co-Defendants, and asserted counter-claims against plaintiff for their fees. The Attorneys also seek to certify a class of all union members entitled to payment under the arbitrator's award, and seek damages against those members in the amount of 1/3 of the arbitrator's award. The Attorneys joined the Army, seeking a writ of garnishment against the EDP payments that will be made to the union members.

Plaintiff and the putative intervenors seek to represent a class of plaintiffs consisting of all persons who are or were employees of the CCAD and who were members of or part of the bargaining unit of the Unions. They seek a declaration that they are not liable to the Attorneys. They also seek damages from the Unions for violation of their duty to negotiate in good faith under 5 U.S.C. § 7114(b). Both the Attorneys and plaintiff sought to have the total amount of the EDP deposited in the registry of the Court.

On November 8, 2001, the Court dismissed all claims against the Army for lack of jurisdiction. The Court also has dismissed plaintiff's state law claims for damages. The remaining parties in this case are plaintiff, the Attorneys, and the Unions; the motions to intervene still are outstanding, as is the putative class certification of plaintiff's suggested class and the Attorneys' suggested class. The Attorneys and plaintiff have filed cross motions for summary judgment, and the Attorneys and the Unions have filed a motion to dismiss plaintiff's claims for declaratory relief. Because the Court finds that it lacks subject matter jurisdiction over this suit, all pending motions are denied as moot and this suit is dismissed.

III. DISCUSSION

First, any claim that plaintiff may have against the Unions for unfair labor practices must be pursued under the Civil Service Reform Act's administrative procedures. *Karahalios v. Nat. Fed. Of Federal Employees, Local 1263,* 489 U.S. 527, 109 S. Ct. 1282 (1989); *see also* 5 U.S.C. § 7101, *et seq.*[1] Section 7114(a)(1) of Title 5

[1] Title VII of the Civil Service Reform Act (CSRA), which is relevant to the instant case, is often referred to as the "Federal Service Labor-Management Relations Statute" (FSLMRS). *See Griffith v. Federal Labor Relations Authority,* 842 F.2d 487, 490 n. 1 (D.C. Cir. 1988).

is the source of a federal employee union's duty of fair representation. *Id.*, 489 U.S. at 531-532, 109 S.Ct. at 1286. A breach of the duty is an unfair labor practice. 5 U.S.C. § 7116(b)(8). Under § 7118, unfair labor practice complaints are adjudicated by the FLRA, which is authorized to order appropriate remedial action. *Karahalios*, 489 U.S. at 532, 109 S.Ct. at 1286. The Supreme Court in *Karahalios* concluded the following:

> "[N]either the language nor the structure of the Act shows any congressional intent to provide a private cause of action to enforce federal employees unions' duty of fair representation. That duty is expressly provided for before the FLRA, a body created by Congress to enforce the duties imposed on agencies and unions by Title VII [of the CSRA], including the duty of fair representation. . . . Indeed, the General Counsel of the FLRA was to have exclusive and final authority to issue unfair labor practice complaints, and only those matters mentioned in § 7123 were to be judicially reviewable." *Id.*, 489 U.S. at 533, 109 S. Ct. at 1287.

Section 7123 permits limited judicial review of some FLRA orders involving arbitration awards, but only if the decision involves an unfair labor practice. 5 U.S.C. § 7123(a)(1). Whether a decision is reviewable depends, therefore, on its characterization, but this Court need not concern itself with such matters, because under § 7123, judicial review lies exclusively in the United States courts of appeals. 5 U.S.C. § 7123(a). Accordingly, this Court has no jurisdiction over a claim of unfair labor practices by any CCAD employee against the Unions.

That disposes of plaintiff's claims against the Unions, but it does not necessarily dispose of the cross-claims by the Attorneys and plaintiff. For essentially the same rea-

son, however, the Court concludes that it lacks jurisdiction over those claims, as well.

The Supreme Court has ruled, in the context of private sector unions, that union agents and members are not personally liable to third parties for acts performed on the union's behalf in the collective bargaining process. *Atkinson v. Sinclair Refining Company,* 370 U.S. 238, 82 S. Ct. 1318 (1962), *overruled on other grounds Boys' Markets, Inc. v. Retail Clerks Union, Local 770,* 398 U.S. 235, 90 S.Ct. 1583 (1970). Likewise, union members cannot sue other union members in disputes arising out of labor agreements. *Ramsey v. Signal Delivery Service, Inc.,* 631 F.2d 1210, 1212 (5th Cir. 1980). Finally, union members may not sue union attorneys for violations of their professional obligations, where the attorneys were hired by the union itself. *Peterson v. Kennedy,* 771 F.2d 1244, 1256-57 (9th Cir. 1985), *cert. denied,* 475 U.S. 1122, 106 S. Ct. 1642 (1986); *Waterman v. Transport Workers' Union Local 100,* 176 F.3d 150 (2nd Cir. 1999) *(per curiam).*

The First Circuit has combined the principles stated above to find that a claim by a member of a union representing federal employees, against an attorney hired by the union, is really a claim against the union itself for unfair labor practices. *Montplaisir v. Leighton,* 875 F.2d 1 (1st Cir. 1989). In *Montplaisir,* air traffic controllers sued their union attorneys. The union members alleged that the attorneys had assured the members that they could strike without significant risk of losing their jobs; the members went on strike, and President Reagan fired them. Although framed as a malpractice action under state law, the First Circuit held that the plaintiffs' claims, if any, were limited to breach of the duty of fair representation. *Id.,* 875 F.2d at 3-4. Such claims may be brought solely under the CSRA *Id.* Accordingly, the

plaintiffs were barred from seeking relief in court under state or federal law.

In *Montplaisir,* union members sued the agents of their unions. It is difficult to conceive how a court could lack jurisdiction over a dispute between a member and a union attorney when the member asserts a claim against the attorney, but have jurisdiction over a dispute between a member and a union attorney when the attorney asserts the claim against the member. In the instant suit, such a finding would lead to an absurd result: the Court could declare the rights between the Attorneys and plaintiff if requested to do so by the Attorneys, but it could not do so if requested by plaintiff. Regardless of who first came to the courthouse, this suit is a labor dispute among union members, their union, and lawyers contracted by the union. The dispute is covered by the CSRA, and if any court has jurisdiction, it is the Fifth Circuit court of appeals. In other words, it is at heart a labor dispute. Disputes among federal employees and their unions are within the exclusive province of the FLRA. *See Karahalios, supra.* The fact that the parties may not label their controversy a labor dispute does not change the result. As the First Circuit has noted, "Where labor-law preemption is an issue, creative labelling cannot carry the day. Rather, the needed reconnaissance focuses upon the 'conduct being regulated, not the formal description of governing legal standards. . . .' " *Montplaisir* 875 F.2d at 4 (quoting *Amalgamated Ass'n of Street, Electric, Ry. & Motor Coach Employees v. Lockridge,* 403 U.S. 274, 292, 91 S.Ct. 1909 (1971)).

This is reinforced by cases holding that union attorneys represent not the individual members, but the unions themselves. "It is well established that although a union attorney may have some ethical obligations to a grievant, the attorney's principal client is the union,

which has retained the attorney, pays for any legal services, and is often the party to the arbitration proceedings." *Peterson v. Kennedy,* 771 F.2d at 1258; *see also Adamo v. Hotel, Motel, Bartenders, Cooks & Restaurant Workers,* 655 F.Supp. 1129 (E.D. Mich. 1987) ("In a labor dispute . . . it is the union which carries on the dispute. . . . [t]he member's rights must be exercised through the union[,] and it is the union which is the client of the law firm."); *Best v. Rome,* 858 F.Supp. 271 (D.Mass. 1994) (attorney who, at request of union, represented individual employee in grievance proceeding, nevertheless acted on behalf of union and claim against attorney was grievance against union), *aff'd,* 47 F.3d 1156 (1st Cir. 1995). This does not mean that the Attorneys have no legally enforceable claim against the individual union members and former members; they may indeed have one, but this Court is not the forum to decide that issue.

IV. CONCLUSION

This Court has no jurisdiction to decide whether the Attorneys are entitled to claim their fees against the individual union members. All pending motions are DENIED as moot. This action is DISMISSED without prejudice. Each side shall bear its own costs and fees relating to this action.

Signed this 28th day of November, 2001.

JANIS GRAHAM JACK

JANIS GRAHAM JACK
UNITED STATES DISTRICT JUDGE

THE SUPREME COURT OF TEXAS

September 4, 2003

Mr. Craig S. Smith
Law Office of Craig S. Smith
14493 S.P.I.D., Ste. A, P.M.B.240
Corpus Christi, TX 78418

Ms. Monte L. Swearengen
Gray & Becker, P. C.
900 West Avenue
Austin, Tx 78701-2210

RE: Case Number: 03-0231
Court of Appeals Number: 03-02-00136-CV
Trial Court Number: GN-104188

Style: ARMANDO M. GARZA, ET AL.
v.
GRAY & BECKER, P.C.

Dear Counsel:

Today, the Supreme Court of Texas denied the motion for rehearing of the above styled petition for review. Justice Enoch was not sitting.

Sincerely,

Andrew Weber, Clerk

by CLAUDIA JENKS
Claudia Jenks, Chief Deputy

cc: Ms. Diane O'Neal, Clerk
Ms. Amalia Rodriguez-Mendoza